167-659

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 256.

THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, APPELLANT,

vs.

R. M. STEELE, SHERIFF OF DONIPHAN COUNTY, KANSAS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED APRIL 6, 1895.

(15,861.)

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1 Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1894, of said court, begun and held at the United States court-house, in the city of St. Paul, Minnesota, on the first Monday in May, to wit, the seventh day of May, A. D. 1894, before the Honorable David J. Brewer, circuit justice; the Honorable Walter H. Sanborn, circuit judge, and the Honorable Amos M. Thayer, circuit judge.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Be it remembered that heretofore, to wit, on the sixteenth day of March, A. D. 1894, a transcript of record in pursuance to an appeal allowed by the circuit court of the United States for the district of Kansas in the case of The St. Joseph and Grand Island Railroad Company, appellant, *vs.* R. M. Steele, sheriff of Doniphan county, Kansas, appellee, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit; which said transcript of record is in the words and figures following, to wit:

2 The United States of America to R. M. Steele, sheriff of Doniphan county, Kansas, or to his successor in office, Greeting:

You are hereby cited and admonished to be and appear in the United States court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal, filed in the clerk's office of the circuit court of the United States for the 1st division of the judicial district of Kansas, wherein The St. Joseph & Grand Island Railroad Company is appellant and plaintiff in error *plaintiff in error*, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said appeal mentioned, should not be corrected, and why speedy justice should not — done the parties in that behalf.

Witness the Honorable John A. Riner, judge of the United States district court for the district of Wyoming, assigned to hold the circuit court of the United States for the district of Kansas, this 13th day of Feb'y, in the year of our Lord one thousand eight hundred and ninety-four.

JOHN A. RINER,
United States District Judge for the District of Wyoming, Assigned to Hold the Circuit Court for the District of Kansas.

No. 6941. United States circuit court, first division of the judicial district of Kansas. St. Joseph & Grand Island Railroad Co. *vs.* R. M. Steele. Citation. Filed February 13", 1894. Geo. F. Sharitt, clerk.

ST. JOSEPH & GRAND ISLAND RAILROAD CO., Appellant,
vs.
R. M. STEELE, Sheriff of Doniphan County, Kansas, Appellee.

We hereby waive service of citation in above-entitled cause and enter the appearance of said defendant.

P. L. SOPER,
J. H. GILPATRICK,
Solicitors for said Appellee.

Feb. 16, 1894.

3 *Bill in Chancery.*

In the Circuit Court of the United States within and for the District of Kansas.

SAINT JOSEPH & GRAND ISLAND RAILROAD COMPANY, Complainant,
vs.
R. M. STEELE, Sheriff of Doniphan County, Kansas, Defendant.

To the honorable the judges of the circuit court of the United States within and for the district of Kansas, in chancery sitting:

Your orator, The St. Joseph & Grand Island Railroad Company, respectfully represents unto your honors that it is a corporation created and subsisting under and by virtue of the laws of Kansas and Nebraska; that it is a common carrier of freight and passengers for hire and owns and operates a railroad extending as a continuous line from the city of Grand Island in the State of Nebraska to the city of Saint Joseph in the State of Missouri; which railroad passes through Doniphan county, in said State of Kansas and through and across the township of Washington in said Doniphan county and across the Missouri river at St. Joseph, Missouri; and that complainant has owned and operated said railroad since November, 1885.

That the defendant is the duly elected, qualified and acting sheriff of said Doniphan county, Kansas, and a citizen thereof; that the matter in dispute in this case exceeds the sum or value of two thousand dollars exclusive of interest and costs; and that the controversy in this case involves the construction of an act of Congress approved July 14th, 1870, granting to the Saint Joseph & Denver City Railroad Company the right to build a bridge and maintain the same across the Missouri river at or near Saint Joseph, Missouri; and also an act of Congress approved March 5th, 1872, authorizing and empowering the Saint Joseph Bridge Building Company to construct a bridge across the Missouri river at or near Saint Joseph, Missouri. That said bridge was built under these acts and that all of its revenue-producing faculties are derived therefrom and that this controversy is over the right to tax this bridge.

That Washington township is one of the political subdivisions o Doniphan county, Kansas, and that that portion of plaintiff's rail

road in the State of Kansas and hereinafter referred to as the bridge over the Missouri river, is in said Washington township. That the eastern boundary of the said State of Kansas at the point of the location of plaintiff's railroad and bridge, is the center of the main channel of the said Missouri river. That the complainant's
3½ railroad crosses the Missouri river immediately west of the city of Saint Joseph and on leaving said township of Washington in said Doniphan county at the center of the main channel of the Missouri river, proceeds into the State of Missouri and terminates at the said city of Saint Joseph.

That a part of said railroad of complainant in said Washington township in said Doniphan county consists of the aforesaid bridge across the Missouri river, one-half of which, to wit, that portion which lies west of the center of the main channel thereof, is in the State of Kansas in said Washington township, and that the other half of said bridge, to wit, that portion which lies east of the main channel of said river is in the State of Missouri.

That this complainant is now and has been since the 23d day of June, 1885, the absolute owner of the whole of said bridge and since said date has been daily using said bridge for running its trains over the same and daily using and operating said bridge as a continuous part of its railroad line. That it has laid upon said bridge a road-bed of ties and steel rails over and upon which its trains and engines run.

That on or about the 31st day of March, 1892, and on the 16th day of May, 1892, by amendment thereof, this complainant returned a sworn list and schedule of all its property and railroad bed, rolling stock, right of way and buildings in the State of Kansas to the auditor of said State as by law required. That said return included one-half of said bridge over the Missouri river at the point aforesaid, that is to say, that part of the said bridge lying in the township of Washington in the State of Kansas, and being that part lying between the western bank of said Missouri river and the center of the main channel thereof. That afterwards, to wit, on or about the 21st day of May, 1892, the State board of railroad assessors for said State of Kansas, did duly assess and value for the purposes of taxation for the year 1892 all the property of this complainant in the State of Kansas as shown by said return, including that part of its said railroad bridge which lies in the said township of Washington in the county of Doniphan; and said board, after having so valued and assessed all the property of this complainant in the State of Kansas, did, through the auditor of said State, as by law provided, make due return to the county clerk of said Doniphan county of said assessment and valuation of said property. That thereupon the county commissioners of said Doniphan county in and for the year 1892 did duly estimate and determine the amount of money to be raised by tax for all county purposes and all other purposes which they were required by law to levy. And
4 they did levy and extend the taxes for the year 1892 in and for said Doniphan county in the various cities, towns, school districts and townships thereof, against all the said property of

complainant so returned to and assessed and valued by the said State board of railroad assessors. And thereupon the said county clerk of said Doniphan county did duly extend the levy so made by said board of county commissioners against all the property of this complainant in said Doniphan county upon the basis of the assessment and valuation so estimated on said property by said State board of railroad assessors. And said clerk did in due time thereafter deliver to the county treasurer of said Doniphan county the tax books or roll of his said county showing the amount of taxes levied and assessed against the property of this complainant in said county, which said taxes for the year 1892, amounted to the sum of $10,305.20 so extended and levied upon all the property owned by this complainant in said Doniphan county, including that portion of the said railroad bridge aforesaid lying between the western bank of the Missouri river and the center of the main channel thereof. That thereafter, to wit, on the 19th day of Dec., 1892, said taxes so levied and assessed against the property of this complainant were due and payable and at said date this complainant paid to the treasurer of said Doniphan county the full amount of all said taxes so levied and assessed and *and* has his receipt therefor.

That during the year 1892 one George Manville was duly elected, qualified and acting trustee for the said township of Washington in said Doniphan county. That by virtue of his office as such trustee the said Manville was also township assessor and charged with the duty of listing and returning all property subject to taxation in his township during said year except such property as belonged to railroad corporations. That on the — day of May, 1892, the said Manville without any authority of law made a pretended assessment of that part of said railroad bridge so as aforesaid lying and being within said Washington township, claiming that the same was subject to taxation in said township as an independent structure and as a toll-bridge under the acts of Congress herein alleged, and pretended to and did assess that part of said bridge within said township at a valuation of $236,900, for taxes for the year 1892. And which said list and assessment he made in writing and returned to the county clerk of said Doniphan county. That afterwards, at their regular meeting in the month of June, 1892, the county commissioners of said Doniphan county did without authority of law, assume jurisdiction to act upon said pretended assessment, and did then and there reduce said assessment to the sum of $20,000 and this complainant appeared before said board of county commissioners and protested to them that the said Manville trustee, had no authority to list and assess any of its said property in said Doniphan county and that they, the said commissioners had no jurisdiction or authority over the said assessment of the property of this complainant in said Doniphan county and that in no event had the said township assessor or the said board any jurisdiction to levy or extend any taxes whatever against that portion of the complainant's bridge lying in said Washington township.

But said board of commissioners then and there claimed and still claim that they had such jurisdiction, that the said bridge was built over the said river under authority from the United States and by its charter was authorized to take toll and was a toll-bridge for railroads and carriages. And thereupon and under direction of said board the said county clerk of Doniphan county did extend the taxes so levied by said board of county commissioners upon the said void assessment of $8,100 against that part of said bridge in said township and delivered the tax books and tax-rolls of said company containing said extension and levy to the county treasurer of said Doniphan county for collection. And your orator, having refused to pay the said taxes so valued and assessed by said township assessor and said board of county commissioners, afterward, to wit, on the 15th day of January, 1893, the treasurer of said Doniphan county made out under his hand and seal, and delivered to this defendant, as the sheriff of said Doniphan county, a warrant for the collection of said illegal and void tax amounting with penalty to the sum of $8,505 so assessed and levied and charged up against the said property of this complainant.

And your orator would further state that this defendant as such sheriff of Doniphan county did on the 6th day of February, 1893, levy upon the said bridge of complainant and has advertised the same for sale for the purpose of collecting said illegal tax, and will on the 20th day of February, 1893, unless restrained by the order of this court, sell said portion of said bridge and put the purchaser thereof in possession of the same, and oust the complainant therefrom. And will stop and prevent your orator from running its trains and engines over said bridge and thus hinder and delay your orator from operating its said railroad. And will compel your orator to bring and become party to various suits at law. And such sale, by said sheriff, will cast a cloud upon the title of your orator's right to said bridge and cause your orator a great and irreparable injury for which it has no adequate remedy at law.

Your orator alleges that the said assessment and listing of said property so made by the said township assessor, was illegal
6 and void. That the returning of the said assessment to the county clerk of said Doniphan county and the levying of taxes on said assessment by said county commissioners, the extending of the taxes so levied on the said assessment, by the said county clerk, and his delivery of said tax-roll containing said void assessment and tax to the county treasurer of said county, and the issuance of the warrant for the sale of the said property for the non-payment of said illegal taxes, and the levying by the defendant upon the said bridge property by your orator, were and are, all and each, illegal, null and void.

That your orator had already been assessed upon said property for the year 1892 by the said State board and had paid such assessment.

Your orator further alleges that neither the county nor township authorities of said Doniphan county, have or had any authority or jurisdiction to levy, assess or extend any taxes whatever upon said

bridge property of complainant in said Doniphan county. That the said State board of railroad assessors of Kansas had exclusive jurisdiction for assessing the said property of your orator in said Doniphan county.

Wherefore, your orator prays that a temporary injunction may be granted herein, restraining the said defendant, sheriff of Doniphan county, his agents, deputies and successors in office, and each of them, from offering for sale, or selling said property of your orator for the taxes so assessed and levied against the same for the year 1892, by the assessing authorities of Doniphan county. That this court shall declare and decree that the said railroad bridge, so as aforesaid owned by your orator, and by it daily used in the operation of its said railroad, is a part of its railroad property, assessible alone by the said State board of railroad assessors, and that the said assessment by said local authorities of Doniphan county for the year 1892, and the said taxes so by them levied and extended, are illegal and void. That at the final hearing of this case, the said temporary injunction may be made perpetual and that your orator may have such other further and general relief in the premises, as equity and good conscience may require and to your honors shall seem proper. And that your honors will grant a writ of injunction issued out of and under the seal of this honorable court, or issued by one of your honors, as in such case made and provided, directed to defendant R. M. Steele sheriff of Doniphan county, Kansas, commanding, enjoining and restraining the said defendant, his agents, deputies and successors in office, and each of them, from selling, or offering
7 for sale the aforesaid bridge property for the taxes so as aforesaid assessed against the same for the year 1892, by the local authorities of said Doniphan county.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America issuing out of and under the seal of this honorable court directed to the defendant R. M. Steele, sheriff of Doniphan county, Kansas, commanding him, on a day certain therein, to be named, and under a certain penalty to be and appear in this honorable court then and there to answer but not under oath all and singular the premises in this, your orator's bill of complaint, and to stand to, perform and abide by such further order, direction and decree as may be made against him, and your orator, as in duty bound, will never pray.

M. A. REED,
Solicitor for Complainant.

UNITED STATES OF AMERICA, }
District of Kansas, } *ss:*

W. P. Robinson, Jr., being first duly sworn, upon his oath, says that he is the general manager of the above-named complainant corporation, that he has read the foregoing bill of complaint and knows the contents thereof, and that said bill and the allegations are true of his own knowledge.

W. P. ROBINSON, JR.,
Gen'l Manager St. Joseph & Grand Island R. R.

Subscribed and sworn to before me this 10th day of February, 1893.

[SEAL.]

GEO. F. SHARITT, *Clerk.*

Let defendant show cause before me on Thursday, February 23rd, 1893, at my chambers, in Topeka, Kansas, why preliminary injunction should not issue as prayed for in the foregoing bill. And in the meantime he is restrained as prayed for, on complainant's giving bond in the sum of five thousand dollars to be approved by clerk of this court.

Topeka, Febr'y 10, '93.

C. G. FOSTER, *Judge.*

Indorsed: No. 6941. St. Joseph & G. I. R. R. Co. *vs.* R. M. Steele, sheriff, &c. Bill of complaint & order thereon. Filed Febr'y 10, 1893. Geo. F. Sharitt, clerk.

8 In the Circuit Court of the United States for the District of Kansas, First Division.

THE ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, Complainant,
vs.
R. M. STEELE, Defendant.

STATE OF KANSAS, *Shawnee County,* } *ss:*

Know all men by these presents, that we, The St. Joseph & Grand Island Railroad Company as principal, and John R. Mulvane of Topeka, Kansas as surety, are held and firmly bound unto the defendant above named in the penal sum of five thousand dollars ($5,000) lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs, executors administrators, successors and assigns jointly and severally firmly by these presents.

Dated at Topeka, Kansas this 10th day of Feb'y, 1893.

The condition of the above obligation is such that, whereas at the suit of the said complainant on this 10th day of Feb'y, 1893, a restraining order has been entered in this cause, directed to the said defendant, in pursuance of the prayer of said bill of complaint.

Now therefore if the said complainant shall indemnify and hold harmless the said defendant and pay to said defendant all costs and damages which he may suffer by reason of said order if it shall be determined that the same was wrongfully obtained, then and in that event this obligation to be void and of no effect otherwise to remain in full force and virtue.

In witness whereof the said complainant has hereunto subscribed this bond by its general manager and the said surety has hereunto affixed his hand the day and date last above written.

ST. JOSEPH & GRAND ISLAND R. R.,
By W. P. ROBINSON, JR., *General Manager.*
JOHN R. MULVANE.

Approved Feb'y 10, 1893.

GEO. F. SHARITT, *Clerk.*

Indorsed: No. 6941. Bond. Filed Febr'y 10, 1893. Geo. F. Sharitt, clerk.

9 In the Circuit Court of the United States for the District of Kansas.

ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY
vs.
R. M. STEELE.

We enter ourselves security for costs in said case, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court. And in default of payment by the plaintiff of any costs ordered or adjusted to be paid by court we hereby agree and stipulate that execution may issue against us and our property for any costs taxed against —.

Dated this 10th day of Feb'y, 1893.

ST. JOSEPH & GRAND ISLAND R. R.,
By W. P. ROBINSON, JR., *General Manager.*
W. P. ROBINSON, JR.

No. 6941. Security for costs. Filed and approved February 10, 1893. Geo. F. Sharitt, clerk.

Chancery Subpœna.

UNITED STATES OF AMERICA, *District of Kansas, First Division,* } ss:

The United States of America to R. M. Steele, sheriff of Doniphan county, Kansas, Greeting:

We command you and every of you, that you appear before our judge of our circuit court of the United States of America for the district of Kansas, at the city of Topeka, in said district, on the first Monday of the month of March next, to answer the bill of complaint of the Saint Joseph & Grand Island Railroad Company, this day filed in the clerk's office of said court, in said city of Topeka, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Kansas to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the city of To-
[SEAL.] peka, in said district, this 10th day of February, in the year of our Lord one thousand eight hundred and ninety-three.

GEO. F. SHARITT, *Clerk.*

10 MEMORANDUM.—The above-named defendant is notified that unless he enter his appearance in the clerk's office of said court, at the city of Topeka aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

GEO. F. SHARITT, *Clerk.*

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss:*

Received the within writ February the 10th, 1893, and executed the same as follows, to wit: Served on the within-named defendants R. M. Steele, sheriff of Doniphan county, Kansas, at Troy, Doniphan county, State and district of Kansas, on the 13th day of February, 1893, by delivering to him personally a true and certified copy of this writ with all the indorsements thereon. And at the same time and place I delivered to the defendant, R. M. Steele, sheriff of Doniphan county, Kansas, a true full and correct copy of the bill of complaint and order of court, in this case as certified to by the clerk of the court from whence it issued.

R. L. WALKER, *Marshal,*
By JAS. McMURRAY, *Deputy.*

Service	4 00
R. R	4 56
Hotel	1 00
	9 56

No. 6941. Circuit court United States, district of Kansas, first division. Saint Joseph & Grand Island Railroad Company *vs.* R. M. Steele, sheriff of Doniphan county, Kansas. Chancery subpœna. Returnable to rule day, first Monday in March, A. D. 1893. Geo. F. Sharitt, clerk. Filed Feb'y 16, A. D. 1893. Geo. F. Sharitt, clerk. M. A. Reed, comp't's sol.

UNITED STATES OF AMERICA, }
District of Kansas. }

THE ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY }
vs. }
R. M. STEELE, Sheriff of Doniphan Co., Kansas. }

FEB. 23, '93.

This case coming on for hearing on the application for a temporary injunction, it is ordered that such injunction issue as prayed for in complainant's bill on complainant giving good
11 and satisfactory bond in the sum of ten thousand dollars ($10,000) with two sureties to be approved by the clerk of this court and conditioned according to law.

C. G. FOSTER, *Judge.*

Indorsed: No. 6941. St. Jos. & G. I. R. R. Co. *vs.* R. M. Steele, sheriff. Order. Filed Febr'y 23, 1893. Geo. F. Sharitt, clerk.

Know all men by these presents that we, the St. Joseph and Grand Island Railroad Company as principal, and A. N. Schuster, S. A. Walker, Lewis Hax and J. R. Mulvane as sureties, are held and firmly bound unto R. M. Steele sheriff of Doniphan county, Kansas, and his successors in office in the penal sum of ten thousand dollars ($10,000) for the payment of which well and truly to be made, we bind ourselves, our heirs executors and administrators and assigns, firmly by the- presents.

The condition of this obligation is such that whereas the St. Joseph and Grand Island Railroad Company has filed its bill in chancery in the circuit court of the United States within the district of Kansas against the said R. M. Steele, sheriff as aforesaid, and whereas the Honorable C. G. Foster, district judge in and for the district of Kansas, did at chambers on the 23rd day of February, 1893, in said cause, at the request of the said St. Joseph and Grand Island Railroad Company, grant a temporary injunction against said R. M. Steele, sheriff as aforesaid, restraining him, his deputies, agents, servants and successors in office, from selling or offering for sale the railroad bridge over the Missouri river at St. Joseph, Mo., known as the railroad bridge of the St. Joseph and Grand Island Railroad Company.

Now therefore we, the St. Joseph and Grand Island Railroad Company as principal and the above-named parties as sureties do hereby undertake and promise to the said R. M. Steele, sheriff as aforesaid, and his successors in office, to pay him all costs and damages which he may sustain by reason of the granting of said temporary injunction, if it shall be finally decided that said temporary injunction ought not to have been granted.

12 In witness whereof we have hereunto set our hands this 28th day of Febr'y, 1893.

ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY,
By W. P. ROBERTSON, JR.,
General Manager.

A. N. SCHUSTER.
S. A. WALKER.
LEWIS HAX.
J. R. MULVANE.

Approved M'ch 2, 1893.

GEO. F. SHARITT, *Clerk.*

Indorsed: 6941. St. Jos. & G. I. R. R. Co. *vs.* Steele, sheriff. Bond. Filed M'ch 2, 1893. Geo. F. Sharitt, clerk.

In the Circuit Court of the United States in and for the District of Kansas.

THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, Complainant,
vs.
R. M. STEELE, Sheriff of Doniphan Co., Kans., Defendant.

To R. M. Steele, sheriff of Doniphan county, Kansas, defendant in the above-entitled action, Greeting:

This cause coming on for hearing on application for a temporary injunction and the court after such hearing, having ordered that a temporary injunction issue herein as prayed in complainant's bill upon said complainant giving bond in the sum of ten thousand dollars with sureties to be approved by the clerk of this court; and

Whereas, said complainant has given said bond as required by said order:

Now, therefore, we do hereby enjoin and command you the said R. M. Steele, sheriff of Doniphan county, Kansas, your deputies agents and successors in office to desist and refrain from selling or offering for sale the bridge or any part thereof, across the Missouri river between said Doniphan county, Kansas, and St. Joseph, Mo., lately advertised by you for sale on Feb'y 20, 1893, until the further order of our said court in the premises, and this command and order you will in nowise fail to obey under the penalty of being adjudged in contempt of our court.

C. G. FOSTER, *Judge.*

Indorsed: No. 6941. St. J. & G. I. R. R. Co. *vs.* R. M. Steele, sheriff. Temporary injunction. Filed M'ch 2, 1893. Geo. F. Sharitt, clerk.

13 In the Circuit Court of the United States for the District of Kansas.

THE ST. JOSEPH & GRAND ISLAND R. R. Co.
vs.
R. M. STEELE, Sheriff of Doniphan Co., Kansas. } No. 6941.

Now comes the defendant, R. M. Steele, sheriff of Doniphan Co., Kas., by J. H. Gilpatrick & P. L. Soper, his solicitors, and enters his appearance in the suit; and to the complainant's bill of complaint herein.

To the clerk of said court:

Enter the above in the order book in equity of said court.

J. H. GILLPATRICK &
P. L. SOPER,
Solicitors for Defendant.

No. 6941. Appearance. Filed March 6, 1893. Geo. F. Sharitt, clerk.

In the Circuit Court of the United States for the First Division of the District of Kansas.

ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, Complainant,
vs.
R. M. STEELE, Sheriff of Doniphan County, Kansas, Defendant.

The Answer of R. M. Steele, Sheriff of Doniphan County, Kansas, Defendant, to the Bill of Complaint of said Complainant.

The defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's bill of complaint contained for answer thereunto or to so much thereof as this defendant is advised is material or necessary for him to make answer unto, this defendant for answer saith:

This defendant admits the corporate capacity of the complainant as averred in said complainant's bill and the custody and ownership of the railroad of said complainant, and that said railroad passes through the township of Washington, in the county of Doniphan in the State of Kansas, but avers that said railroad line has been operated by said complainant since June 22d, 1885, when said railroad was formed by the consolidation of the St. Joseph and Marysville Railroad Company and the Grand Island and Marysville Railroad Company.

And this defendant further admits that he is the duly elected and qualified sheriff of the county of Doniphan in the State of Kansas, as averred in the said bill, and that the amount in controversy is as stated by said complainant.

14 Said defendant further answering says that he admits that the bridge across the Missouri river at or near St. Joseph, Missouri, and extending to a point in Doniphan county, in the State of Kansas opposite to said city was completed under an act of Congress approved March 5th, 1872, and an act supplementary thereto, approved May 1st, 1872, granting the St. Joseph Bridge Building Company the power and authority to construct a bridge across the Missouri river at or near St. Joseph, Missouri, but denies that said bridge was constructed under the act of Congress approved July 14th, 1870, but this defendant also admits and avers that the construction of said acts of Congress of March 5th, 1872, and the act amendatory thereto of May 1st, 1872, 17th Statutes at Large, page 33 and 58 are involved in this litigation.

And this defendant further answering says that it was provided in the act of Congress approved March 5th, 1872, authorizing the construction of a bridge across the Missouri river at or near St. Joseph, Missouri, that the St. Joseph Bridge Building Company should have the right,

"To construct a bridge across the Missouri river at or near St. Joseph, Missouri, and to lay on and over said bridge railway tracks

for the more perfect connection of any and all railways that are now, or which may hereafter be, constructed to the Missouri river at or near Saint Joseph, or to the river on the opposite side of the same, near Saint Joseph; and build, erect, and lay on and over said bridge ways for wagons, vehicles of all kinds and for the transit of animals, and to provide ways for foot passengers, and to keep up, maintain and operate said bridge for the purpose aforesaid; and that when said bridge is constructed, all trains of all railroads terminating at said river, and on the opposite side thereof, at or near Saint Joseph, Missouri, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of the same, under the limitations and conditions hereafter named. The owners of said bridge may also charge and receive reasonable compensation or tolls, for the transit over the said bridge of all wagons, carriages, vehicles, animals, and foot passengers."

And said defendant further avers that said bridge was completed maintained and operated as a toll-bridge by the said Saint Joseph Bridge Building Company for many years prior to any alleged claim of ownership by the said complainant, and that whatever rights said Saint Joseph Bridge Building Company had were obtained from said acts of Congress and its charter had and obtained from the State of Missouri.

And this defendant avers that the said Saint Joseph Bridge Building Company had no power or authority to sell or dispose of its franchises and property to said complainant, and avers that the said complainant had and has no right power or authority under the laws of the State of Kansas to purchase said bridge and to maintain and operate said bridge as a toll-bridge as required by the charter of the Saint Joseph Bridge Building Company and the acts of Congress hereinbefore referred to.

And this defendant further denies that the said bridge forms any part of the railroad of said company but is an independent structure, to wit, a toll-bridge and denies that said bridge was built or constructed as a part of any railroad, and further denies that said complainant could by any act of purchase change the original character of said bridge.

And this defendant further answering says that said bridge is now being maintained, operated and used as a toll-bridge; that the Chicago, Rock Island and Pacific Railway Company used said bridge for the passage of its railway trains over and across said bridge and pay for the use thereof to said complainant, or to parties to this defendant unknown, a large sum of money annually, to wit, the sum of seventeen thousand five hundred dollars, as this defendant is informed and believes; that the income and receipts to said complainant, or to parties to this defendant unknown, of and from the travel of wagons, passengers and animals over and on account of said bridge exceeds the sum of fifteen thousand dollars per annum, as this defendant is informed and believes.

This defendant further answering says that he admits that Washington township is one of the political subdivisions of Doniphan county, Kansas, and that the eastern boundary of said State of Kansas

is the center of the main channel of the Missouri river, and further admits that the bridge the right of which to tax is the subject of this litigation, is in said Washington township; but this defendant denies that said bridge lying within Washington township in said Doniphan county, west of the center of the main channel of the Missouri river, is a part of the railway of said complainant, but avers, as he has heretofore averred, that said complainant, had and has no lawful authority to own, maintain and operate said bridge as required by the charter of its builder and the acts of Congress hereinbefore referred to.

And this defendant denies that said complainant has been since the 23d day of June, 1885, the lawful owner of said bridge, but he admits that said complainant has been using said bridge for the running of its trains over the same, but avers that said bridge has been at all times operated, maintained and used as a toll-
16 bridge and denies that said bridge has been or is now used exclusively for the purposes of a railroad.

And this defendant further answering admits that said complainant returned a sworn list and schedule of all its property and railroad bed, rolling stock, right of way and buildings in the State of Kansas, to the auditor of said State as by law required, and further admits that by an amended return of the 16th day of May, 1892, said complainant returned to the auditor of the State that portion of the bridge lying west of the main channel of the Missouri river at or near Saint Joseph Missouri, *to the auditor of the State* as a part of its railroad, but this defendant avers that said return was without any authority of law as complainant then and there well knew, and this defendant avers that said return was made for the sole purpose of unlawfully preventing said toll-bridge from being listed for taxation by the township assessor of Washington township, in the county of Doniphan, as required by law, and for the further purpose of preventing said Doniphan county and said township from receiving the full tax upon said bridge as by law entitled to.

And this defendant further answering says that he denies that *that* the said board of railroad assessors for said State of Kansas did lawfully assess said bridge or any part thereof, and avers that the State board of railroad assessors for the State of Kansas had no power or authority to assess said toll-bridge, but avers that the sole power to assess said toll-bridge is vested in the township trustee in which said toll-bridge may be located, and that it is provided by the laws of the State of Kansas that toll-bridges shall be listed in the township or ward where they are located.

And this defendant further avers that if said State board of railroad assessors did assess said bridge, and if said complainant did pay any tax upon said bridge to the various county treasurer- through which the railroad of said complainant runs, it was by the unlawful connivance of said complainant, and for said unlawful connivance and act it can have no relief in a court of equity.

And this defendant further answering admits that during the year 1892, one George Manville was the duly elected, qualified and acting trustee for the township of Washington, in Doniphan county, Kan-

sas, and that as township trustee he was charged with the duty of listing and returning the property subject to taxation in his township during said year and that his duties are defined by the laws of the State of Kansas.

And this defendant further admits that the said George Manville, township trustee, did assess said bridge, or so much thereof
17 lying and being within said Washington township as an independent structure and as a toll-bridge, at a valuation of two hundred and thirty-six thousand nine hundred dollars, but this defendant denies that said assessments was made without any authority of law, but avers that the said assessment was legal and made in strict conformity with the statute in such case made and provided.

And this defendant further admits that the board of county commissioners of said Doniphan county at their regular meeting in the month of June, 1892, did then and there reduce said assessment of said bridge in the sum of two hundred thousand dollars, but denies that said board of county commissioners acted without authority of law, and avers that the act of the said board of county commissioners was in strict compliance with law and that said bridge was properly listed and taxed as a toll-bridge entirely within the limits of Washington township in the county of Doniphan and State of Kansas.

And this defendant further admits that the said county clerk of Doniphan county did extend the taxes so levied by said board of county commissioners upon the said assessment of said bridge as reduced by said board, amounting to the sum of eighty-one hundred dollars, and that the said county clerk did deliver to the county treasurer of said Doniphan county, in proper form said assessment against said bridge for collection.

And this defendant further answering admits that on the 15th day of July, 1993, the treasurer of Doniphan county made out under his hand and seal — delivered to this defendant as the sheriff of Doniphan county a warrant for the collection of said tax, amounting with penalty to the sum of eight thousand five hundred and five dollars so assessed and levied and charged up against the said bridge as being in the possession and under the control of this complainant, but this defendant denies that said tax is illegal and void, but avers that the same is legal and valid.

And this defendant further answering admits that as sheriff of Doniphan county on the 6th day of February, 1893, he did levy upon said bridge as property in the possession or under the control of said complainant and that he advertised the same for sale on the 20th day of February, 1893, for the purpose of collecting said tax, but denies that said tax is illegal.

And this defendant further answering says that he denies that the acts of the township assessor, and of the county clerk and of the county treasurer, and of this defendant as sheriff, all of said
18 Doniphan county, in the State of Kansas, are illegal, null and void, but avers that the acts of each and every officer hereinbefore referred to were done and performed in strict compliance with law.

And this defendant further answering says that he denies that neither the county -or township authorities have or had any authority or jurisdiction to levy, extend or assess any taxes whatever upon said bridge in said Doniphan county, and that the said State board of railroad assessors of Kansas have exclusive jurisdiction for assessing said bridge, but avers that the State board of railroad assessors of Kansas have no jurisdiction whatever to tax said bridge, operated and maintained as hereinbefore stated as a toll-bridge, but avers that the sole right and authority, and jurisdiction to levy, assess and extend taxes upon said bridge is vested exclusively in the township and county authorities of said Doniphan county.

And this defendant further answering says and avers that said bridge is not now and never has been maintained, operated and used exclusively for the purpose of a railroad, but at all times has been used, operated and maintained as a toll-bridge as hereinbefore stated; that said bridge, as this defendant is informed and believes, is a valuable structure, and cost over nine hundred thousand dollars, although said bridge is but thirteen hundred and eighty-eight feet in length; that the total amount of taxes paid by said complainant to the county treasurer of Doniphan county upon its road-bed, depots, right of way, and other property within Doniphan county, amount to the sum of ten thousand three hundred and five dollars and twenty cents, as stated by said complainant, but the said railway was assessed for the year 1892 at the rate of six thousand five hundred dollars per mile by said board of railroad assessors, and that no part of the tax of said bridge was paid in to the office of the treasurer of Doniphan county, unless the same is included in the valuation of six thousand five hundred dollars per mile placed upon said railroad track by the State board of railroad assessors.

And this defendant further avers that said assessment of six thousand five hundred dollars per mile upon the road-bed of said railway was uniform throughout the line of said railway company within the State of Kansas, and that the said railway company was assessed and paid upon the same valuation of six thousand five hundred dollars per mile in Brown county and other counties west of Doniphan that it paid in Doniphan county, although said bridge is entirely within the limits of Doniphan county and is not used exclusively for railroad purposes.

19 And this defendant avers that if the valuation of said bridge is included within said valuation of six thousand five hundred dollars per mile, fixed by the State board of railroad assessors of the State of Kansas, that said valuation was induced and placed by the unlawful connivance of said complainant, it, the said complainant, well knowing the nature and character of said bridge and that by an unlawful act of purchase it could not change the character of said bridge as an independent structure and that if said complainant paid its full tax levied all along its line of railway to the county treasurer of each county through which its line of railway passed that said payment was of its own voluntary act and deed and said increased taxation, if any, was through its unlawful

connivance, of which the said complainant should have no standing in a court of equity to complain.

And this defendant for a further ground of defense avers that the entire matters in controversy herein have been previously litigated between said complainant and the predecessor of this defendant, John Devereux, as sheriff of Doniphan county, Kansas, in a case entitled St. Joseph and Grand Island Railroad Company *vs.* John Devereux, sheriff of Doniphan county, Kansas, tried in the circuit court of the United States for the district of Kansas, and numbered 6279, and that upon the hearing of said cause the Honorable David J. Brewer, circuit judge of the circuit court of the United States for the district of Kansas, did on the 30th day of December, 1889, deliver his opinion in said cause, and which said cause involved the matters in issue in this present suit, in favor of the sheriff of Doniphan county, Kansas, and held that said bridge was properly taxable by the proper authorities of Doniphan county, Kansas, and that by reason of said cause being fully litigated and said decision, the said complainant is barred and estopped from again litigating said question and said bill for said cause should be dismissed.

That if there is any other or further thing that the complainant's said bill of complaint contains material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, traversed and avoided or denied, the same is not true according to its best knowledge and belief; all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays that he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained, and that said temporary injunction may be set aside and revoked, and this defendant be permitted to perform his duties as required by law.

R. M. STEELE,
Sheriff Doniphan County, Kansas.

J. H. GILPATRICK,
P. L. SOPER, *Of Counsel.*

THE UNITED STATES OF AMERICA,
County of Doniphan, District and State of Kansas, } ss:

R. M. Steele, of lawful age, being first duly sworn, on oath says that he is the defendant named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof and that the same is true of his own knowledge except so far as the matters herein are stated on information and belief, and that as to those matters he verily believes them to be true.

R. M. STEELE,
Sheriff Doniphan County, Kansas.

Subscribed and sworn to before me this 27 day of March, 1893.

[SEAL.]

E. C. WINZER, *Dist. Clerk.*

Endorsed: # 6941. U. S. circuit court, 1st div. St. Joseph & Grand Island R. R. Co. *vs.* R. M. Steele, sheriff, &c. Answer of R. M. Steele. Filed Apr. 3, 1893. Geo. F. Sharitt, clerk. J. H. Gilpatrick, P. L. Soper, sol. for def't.

In the Circuit Court of the U. S. for the District of Kansas.

ST. JOSEPH & GRAND ISLAND R. R. Co.
vs.
R. M. STEELE.

The above-named complainant, saving and reserving to itself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of defendant, for replication thereunto, saith that it doth and will aver, maintain and prove its said bill to be true, certain and sufficient in the law, to be answered unto by the said defendant, and that the answer of the defendant is very uncertain, evasive and insufficient in law, to be replied unto by this complainant—without that, that any other matter or thing in said answer contained, material or effectual in law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true. All which matters and things this complainant is ready to aver, maintain and prove as this honorable court shall direct — as in and by *his* said bill *he* hath already prayed.

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M. A. REED,
Solicitor for Complainant.

Indorsed: No. 6941. In the circuit court of the United States, district of Kansas. St. Joseph & Grand Island Railroad Company *vs.* R. M. Steele. Replication. Filed May 1st, 1893. Geo. F. Sharitt, clerk.

Order.

In the Circuit Court of the United States for the First Division of the District of Kansas.

ST. JOE AND GRAND ISLAND RAILWAY COMPANY, Plaintiff,
vs.
R. M. STEELE, Sheriff of Doniphan County, Kansas, Defendant.

Upon application of defendants and good cause shown therefor, it is hereby ordered that the time for taking testimony in said above-entitled cause be and is hereby extended to November 25th, 1893.

C. G. FOSTER, *Judge.*

Indorsed: # 6941. In U. S. circuit ct. St. Joe & G. I. R. R. Co. *vs.* R. M. Steele, sheriff. Order extending time of taking testimony. Filed Oct. 23, 1893. Geo. F. Sharitt, clerk.

In the Circuit Court of the United States within and for the District of Kansas.

ST. JOSEPH & GRAND ISLAND R. R. Co., Plaintiff,
vs.
R. M. STEELE, Defendant.

Agreed Statement of Facts.

1st. That the complainant, The St. Joseph & Grand Island Railroad Co., on June 23rd, 1885, purchased the bridge in question over the Missouri river at St. Joseph, Missouri, and since that date has been in possession and enjoyment thereof in connection with its railroad business. That the western nine hundred and twenty-six feet of said bridge is in Washington township, Doniphan county, Kansas.

22 2nd. That said bridge is laid its whole length with steel rails. That all trains of complainant start from St. Joseph, Missouri, and pass over said bridge and thence continuously on and over the road-bed of said railroad company through the State of Kansas in a northwesterly direction into the State of Nebraska, terminating at Grand Island.

3rd. That the complainant was at the times stated in its petition herein, and still is, in the daily use of said bridge and runs its trains over the same in its daily conduct of its business as a common carrier, and that in such daily operations the said bridge is used in connection with complainant's railroad line.

4th. That said bridge was first authorized to be built by an act of Congress approved July 14th, 1870, granting to the St. Joseph & Denver City Railroad Company the right to build a bridge and maintain the same across the Missouri river at or near St. Joseph, Missouri, and that said last-named railroad company, under date of April 8th, 1871, duly assigned said bridge franchises to the St. Joseph Bridge Building Company; and that on March 5th, 1872, Congress passed an act granting to the St. Joseph Bridge Building Company the right to build a bridge over the Missouri river at or near St. Joseph, Missouri, and that on May 1st, 1872, Congress passed an act amendatory to said last-named act. That Exhibit "A" hereto attached and made a part hereof, is a copy of the contract by which the said St. Joseph & Denver City R. R. Co. assigned its said bridge franchises to the said St. Joseph Bridge Building Company. That under these said several acts, or some of them, the bridge in question was erected in the years 1872 and 1873.

5th. That after said bridge was completed, it was and continued to be the property of said bridge building company until 1885, and was operated by said bridge building company under the terms and conditions of its charter and the acts of Congress herein referred to, and received from all railroads crossing the same and from the general public, compensation as therein provided for.

6th. That said complainant purchased said bridge, the corporate

organization of said bridge building company has not been kept up. And said organization has no interest in or control over said bridge property. And the operation and management of said bridge is done and performed by the agents and servants of the complainant.

7th. That the complainant, through its proper officers, for the year 1892, made return of all its railroad property to the State board of railroad assessors of the State of Kansas, which return included as a part of said railroad company's track and property, that part of the bridge structure lying in the State of Kansas.

8th. That the State board of railroad assessors of Kansas valued and assessed the railroad property of complainant for said year, and in fixing the value of complainant's said property, a value of so much of said bridge as was in said Washington township to wit, nine hundred and twenty-six (926) feet, was added to the valuation placed upon said railroad property.

9th. That thereupon said State board, through the auditor of said State of Kansas, made the returns to the several county clerks through whose counties the line of complainant's said road ran, as required by sections 6879 and 6880, Statutes of Kansas, 1889, the county clerk of said Doniphan county receiving one of said returns.

10th. That upon the receipt of said State board's return the county commissioners of said Doniphan county levied and extended the taxes for the year 1892 in and for that county for all its taxable purposes against and upon all of the property of complainants so as aforesaid valued, assessed and returned by said State board of assessors to the county clerk of said Doniphan county; that the sum so levied and extended against complainant's said property in and for said county was the sum of $10,305.20 which sum was on the 19th day of December, 1892, paid in full by complainant to the treasurer of said county.

11th. That in May, 1892, one George Manville, the township assessor of Washington township, Doniphan county, Kansas, claiming that so much of said bridge as was situated in his said township, to wit, nine hundred and twenty-six (926) feet was subject to a local tax in and for said county, made a statement of property, valuing said portion of said bridge at two hundred and thirty-six thousand, nine hundred dollars ($236,900) claiming said bridge to be a toll-bridge, and returned said statement to the county clerk of said Doniphan county as the basis of a local tax to be imposed by the taxing authorities of said county. That said county authorities voluntarily reduced the valuation of the part of said bridge so returned to them by said township assessor to two hundred thousand dollars ($200,000). That this complainant remonstrated against the county commissioners of said county assuming any jurisdiction over the matter. Notwithstanding which, said county commissioners taxed the said nine hundred and twenty-six (926) feet of said bridge for all local purposes in said county for the year 1892 as a toll-bridge and extended the tax thereon upon said valuation

at the sum of eight thousand one hundred dollars ($8,100) and the said tax books of said Doniphan county, containing said tax, were then delivered to the treasurer of said county.

12th. That complainant refused to pay said local tax of said Doniphan county, and on the same becoming delinquent, and on the 15th day of January, 1893, the said treasurer made out and delivered to the defendant, R. M. Steele, the sheriff of said county, a warrant for its collection.

13th. That on the 6th day of February, 1893, defendant levied upon the nine hundred and twenty-six (926) feet of said bridge under said warrant, and advertised that he would, on the 20th day of February, 1893, sell the same for said delinquent taxes.

14th. That the complainant is the legal successor by foreclosure proceedings of the rights and franchises of the St. Joseph & Denver City Railroad Company, which proceedings were in November, 1875.

15th. That said complainant has at all times since its purchase of said bridge charged and collected tolls for the passage of foot passengers, wagons, and carriages over the same and derives an annual income from the general public.

16th. That the Chicago, Rock Island & Pacific Railway Co. also uses said bridge under a contract with the complainant for the operation of its trains across the same at an annual rental of seventeen thousand five hundred dollars ($17,500) a year.

17th. That said board of railroad assessors assessed said bridge as a bridge used, operated, controlled and maintained for railway purposes and included a valuation of the same in the general per mile valuation, and that the same tax per mile was paid by complainant in Brown county, Kansas, and other counties through which ran the line of railway of complainant, although said nine hundred and twenty-six (926) feet of said bridge is entirely within Washington township, Doniphan county, Kansas.

18th. That said complainant charges every person riding in its cars over said bridge the sum of twenty-five cents for such transportation, in addition to the regular fare of three cents per mile.

19th. That said bridge was built by an incorporated company, the St. Joseph Bridge Building Company, a copy of the charter under which said bridge was built, operated and maintained by said company, being hereto attached, marked Exhibit "B" and made a part hereof, said company not being a railway company.

20th. That the following is the description under which the bridge in question was taxed by the Doniphan county authorities for the year 1892 "Union Pacific Railroad Company's toll-bridge across Missouri river between St. Joseph, Missouri and Elwood, Kansas."

21st. It is admitted for the purpose of this suit only, subject however to complainant's objection for incompetency on the hearing of this case, that the valuation imposed upon that part of said bridge in said Doniphan county for the purposes of taxation for the year 1892 was not excessive.

22nd. It is admitted subject however to complainant's objection for incompetency on the hearing of this case, that the porportional share of the value of said complainant's property for taxation in Doniphan county as sent to the county clerk of said county by the auditor of said State for the years 1890, 1891 and 1892 was as follows:

	Valuation.	Tax.
1890	$219,480 00	$10,809 87
1891	217,460 00	8,979 13
1892	216,620 00	10,305 20

23rd. That Exhibit "C" hereto attached, is a copy of the property statement returned by the township assessor of Doniphan county, Kansas, for the year 1892 of the bridge in question.

M. A. REED,
Att'y for Complainant.
J. H. GILPATRICK,
P. L. SOPER,
Att'ys for Def't.

EXHIBIT "A."

Agreement Between the Saint Joseph & Denver Railroad and the Bridge Company.

This agreement, made and entered into this 8th day of April, 1871, by and between the St. Joe & Denver City Railroad Company, a corporation, organized under the laws of Kansas, party of the first part, and the St. Joseph Bridge Building Company, a corporation organized under the laws of Missouri, party of the second
26 part, witnesses that said party of the first part, for and in consideration of the sum of one dollar to it paid by the said party of the second part, and the covenants and agreements of the said party of the second part, hereinafter contained, does hereby bargain, sell, convey, assign and transfer to said party of the second part all the rights and privileges which said party of the first part has, under and by virtue of an act of Congress of the United States, entitled "An act to amend an act entitled An act authorizing the construction of a bridge over the Missouri river on the military reservation at Fort Leavenworth, Kansas," approved July 14th, A. D. 1870, and said party of the second part covenants and agrees to and with said party of the first part and it- assigns that it will construct a railroad bridge across the Missouri river at the city of St. Joseph, Buchanan county, Missouri, and complete the same within two years from the first day of January, 1872, so that railroad locomotives and trains of cars can pass over the same with convenience and safety, and the eastern end of said bridge shall be within the present corporate limits of said city of St. Joseph. Said bridge shall be constructed of good and substantial material and in a good and workmanlike manner and shall be as perfect and durable in material, and all its workmanship and details as the railroad

bridge at Kansas City, Missouri; and said party of the second part further covenants and agrees that it will permit all locomotives and empty cars and all baggage and mail cars of said party of the first part and of its assigns when used to transport baggage and United States mail matter to pass over said bridge free from toll, or any other charge whatever. And said party of the second part further covenants and agrees that it will never under any circumstances charge said party of the first part, or its assigns, more than five dollars for each loaded passenger, freight or other car, which said party of the first part or its assigns may pass over said bridge. And said party of the second part further covenants and agrees that it will never charge said party of the first part or it- assigns any higher toll than it charges other railroad companies; and said party of the first part and its assigns shall have all the rights and privileges of the most favored railroad company in the use of said bridge.

Provided, however, and these presents are upon the express condition, that if said bridge shall not be completed as aforesaid, within the time herein specified, all the rights and privileges hereinbefore conferred upon, and transferred to said party of the second part, shall cease and determine, and the assignment hereinbefore made shall become null and void, and the franchise hereinbefore transferred or assigned shall vest in said party of the first part or
27 its assigns in as full and complete a manner and to the same extent as though this contract had never been made.

In testimony whereof said party of the first part has caused these presents to be signed by its acting president, and said party of the second part has caused these presents to be signed by its president and said parties have caused these presents to be sealed with their respective seals the day and year first hereinbefore written.

THOS. HARBINE,
Vice-Pres't and Acting Pres't St. Joe & D. C. R. R. Co.

Attest: E. H. SAVILLE,
Sec'y St. Joe & D. C. R. R. Co.

WILLARD P. HALL,
President Saint Joseph Bridge Building Co.

Attest: J. M. HAWLEY,
Secretary Saint Joseph Bridge Building Co.

EXHIBIT "B."

We, the subscribers, do hereby associate ourselves together, and form an incorporated company, under and according to the provisions of chapter 69, entitled "Of manufacturing and business companies" of article 24 entitled "Of private corporations" of the General Statutes of the State of Missouri, approved March 20th, 1866, for the purpose of constructing and maintaining a bridge over the Missouri river, at the city of Saint Joseph in Buchanan county, State of Missouri, for public use, for the crossing of persons and property under the articles, conditions and name specified in the following articles of association.

Articles of Association.

SECTION 1. The name of this company shall be "the Saint Joseph Bridge Building Company."

SEC. 2. This company shall continue fifty years.

SEC. 3. The business and objects for which this company is formed are to construct and maintain a bridge across the Missouri at the city of Saint Joseph, in the county of Buchanan, in the State of Missouri; the eastern terminus of which bridge to be within the present corporate limits of said city of Saint Joseph, and the western terminus of which said bridge to be within the limits of Doniphan county, in the State of Kansas, for public use for the crossing of railroad locomotives, cars, trains of cars, and also for the purpose of crossing road wagons, carriages and other vehicles, horses,
28 mules, cattle and stock of all kinds, and persons and property; said bridge to be used for both railroad and ordinary travel.

SEC. 4. The capital stock of said company shall amount to two millions of dollars, and shall be divided into twenty thousand shares of one hundred dollars each.

SEC. 5. The property and business of said company shall be controlled, managed and conducted by thirteen directors.

SEC. 7. The following persons, whose places of residence are, as hereinafter stated, shall be the directors of said company, to manage its affairs, for the first year, and until others are chosen in their places to wit: Willard P. Hall, Isaac C. Parker, James A. Matney, John Pinger, I. G. Kappner, J. B. Hinman, J. H. R. Cundiff, John L. Buttinger, O. M. Smith, M. Oliver, J. D. McNeely, James M. Hawley, William Z. Ranson, all of whom reside in the county of Buchanan, State of Missouri.

In testimony whereof the undersigned, each for himself hereunto subscribes his name, his place of residence, and the number of shares of stock he agrees to take in said company.

Names.	Residence.	No. of shares.	Amount.
Willard P. Hall	St. Joseph	10	$1,000 00
Mordecai Oliver	"	2	200 00
James M. Hawley	"	5	500 00
J. B. Hinman	"	1	100 00
O. M. Smith	"	5	500 00
W. Z. Ransom	"	1	100 00
I. G. Kappner	"	10	1,000 00
J. H. R. Cundiff	"	1	100 00
J. L. Bittinger	"	2	200 00
John Pinger	"	10	1,000 00
J. D. McNeely	"	2	200 00
I. C. Parker	"	5	500 00
James A. Matney	"	5	500 00

STATE OF MISSOURI, }
County of Buchanan. }

I, Winslow Judson, a notary public within and for the county and State aforesaid, do hereby certify that Willard P. Hall, Mordecai Oliver, James M. Hawley, J. B. Hinman, O. M. Smith, W. Z. Ransom, I. G. Kappner, J. H. R. Cundiff, J. L. Bittinger, John Pinger, J. D. McNeely, James A. Matney, and I. C. Parker, the incorporators above named, each personally known to me, appeared before me, and acknowledged that they subscribed their names, places
29 of residence, number and amount of shares to the foregoing articles of association for the purpose therein mentioned and set forth.

Given under my hand and official seal this 22nd day of
[SEAL.] December, A. D. 1870.

WINSLOW JUDSON,
Notary Public.

Office of the secretary of state, city of Jefferson, Missouri.

I, Eugene F. Weigel, secretary of state for the State of Missouri, do hereby certify that the annexed pages contain a true, complete and full copy of the articles of association of "the Saint Joseph Bridge Building Company," filed in this office the 27th day of December, 1870, and recorded in Book of Bridge Corporations, on page 29 and 30, as appears by comparing the same with the original of said articles now in file as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal. Done at office this 3rd day of January,
[SEAL.] A. D. 1871.

EUGENE WEIGEL,
Secretary of State.

EXHIBIT "C."

STATE OF KANSAS, }
County of Doniphan, } *ss:*

I, W. H. Fornerook, county clerk in and for said county do hereby certify that the "Statement of personal property" under the control of the Saint Joseph and Grand Island Railroad Company hereto attached is a true copy of the return of the assessor for Washington township, now on file in my office, and I further certify that the board of county commissioners of said county sitting as a board of equalization did on the 15th day of June, A. D. 1892, reduce the valuation so made by the assessor of said township from $236,900.00 to $200,000.00, as appears of record at page 90 of Journal No. 6 of the proceedings of said board.

In testimony whereof I have hereunto set my hand and affixed the official seal of the county at Troy in said county, this
[SEAL.] 14th day of March, A. D. 1893.

W. H. FORNCROOK,
County Clerk.

30 *Statement of Personal Property*

In Washington township, Doniphan county, Kansas.

In the possession or under the control of St. Joe and G. I. R. R. Co. as ——. L—— liable to taxation on the first day of March, A. D. 1892, whose residence on said first day of March was school district No. 2, and road district No. —.

Description of personal property.	Number.	Value.
* * * * * * *		
The west 926 ft. of the toll-bridge across the Mo. river between St. Joe and Elwood		$236,900 00
* * * * * * *		
Total taxable property		$236,900 00

STATE OF KANSAS, }
County of Doniphan, } ss:

Copy.

I do solemnly swear that in the above statement I have truly set forth all personal property which by law I was required to list, either on my own account or in behalf of others, according to the best of my knowledge.

(Signed) —— ——.

Sworn to before me and subscribed in my presence, this 26 day of May, 1892.

(Signed) GEO. MANVILLE, *Assessor.*

Indorsed: No. 6941. U. S. circuit ct. St. J. & Grand Island R. R. Co. *vs.* R. M. Steele, sheriff, &c. Agreed statement of facts. Filed Nov. 21, 1893. Geo. F. Sharitt, clerk.

Additional Agreed Statement of Facts.

In the U. S. Circuit Court for the District of Kansas.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
R. M. STEELE, Sheriff of Doniphan Co., Kan., Defendant.

It is further stipulated and agreed by and between the parties hereto that: Defendant may introduce or attach at any time a certified copy of the charter of the St. Joseph & Denver City Railway Co., and that the same may be considered as introduced in evidence at the hearing of this cause.

31 2. That the bridge in question is the only bridge specifically mentioned in the 1892 return of the St. Joseph & Grand

Island R. R. Co. to the State board of railway assessors for Kansas and that no mention is made of the bridges on the line of said railway over the Blue — the Nemaha rivers which were included as a part of its railroad track and so returned in statement.

3. That the Union Pacific Railway Company has a ninety-nine years' lease of the St. Joseph & Grand Island Railway Co., which said lease was in force in and during the year 1892. Said road is, however, operated independently of the Union Pacific, that is under a separate general manager and officers including a board of directors although reports are made to the Union Pacific Railway Co.

These agreements are subject to objections upon hearing.

M. A. REED,
Sol. for Complainant.
J. H. GILPATRICK,
P. L. SOPER,
Sols. for Defendant.

Indorsed: #6941. U. S. circuit court. St. J. & G. I. R'y Co. *vs.* R. M. Steele, sheriff etc. Additional agreed statement of facts. Filed Dec. 12, 1893. Geo. F. Sharitt, clerk.

And upon the hearing of said cause, the parties hereto agreed in open court that the record in case #6279 St. Joseph & Grand Island Railroad Co. *vs.* John Devereaux, sheriff of Doniphan county, Kansas, might be introduced in evidence by defendant subject to objection for incompetency by complainant, and thereupon the said defendant, R. M. Steele, sheriff of Doniphan county, Kansas, offered in evidence the entire record in said case #6279 to the introduction of which the said complainant objected for the reason that the said record was incompetent, irrelevant & immaterial, which said objection was by the court then & there overruled, to which ruling and judgment of the court the complainant then & there excepted and still excepts. And thereupon the said defendant introduced as part of his defense the said record in case #6279 aforementioned which said record is in words and figures as follows, to wit:

32 *Bill in Chancery.*

In the Circuit Court of the United States within and for the District of Kansas.

ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, Complainant,
vs.
JOHN DEVEREAUX, Sheriff of Doniphan Co., Kansas, Defendant.

To the hon orable the judges of the circuit court of the United States within and for the district of Kansas, in chancery sitting:

Your orator, The St. Joseph & Grand Island Railroad Company, respectfully represents unto your honors that it is a corporation created and subsisting under and by virtue of the laws of the State-

of Kansas and Nebraska; that it is a common carrier of freight and passengers for hire, and owns and operates a railroad extending from the city of Grand Island in the State of Nebraska to the city of St. Joseph in the State of Missouri; which railroad passes through Doniphan county in said State, and through and across the township of Washington in said Doniphan county and across the Missouri river at Saint Joseph, Mo.; and that complainant has owned and operated said railroad since November, 1885.

2.

That the defendant, John Deveraux, is the duly elected, qualified and acting sheriff of said Doniphan county and a citizen thereof.

That the matter in dispute in this case exceeds the sum or value of $2,000, exclusive of interest and costs; and that the controversy in this case involves the construction of an act of Congress passed and approved March 6th, 1820, admitting the State of Missouri into the Union & defining its boundaries, and an act of Congress passed and approved June 7th, 1836, and a treaty of the United States made and concluded March 28th, 1837, between the United States and the Platte Indians, as to the location of the boundary line between the States of Kansas and Missouri. That is to say, as to whether the boundary line between said States at a point immediately west of St. Joseph in the State of Missouri is the eastern bank of the Missouri river, or the center of the main channel of said Missouri river; this complainant alleging and contending that the boundary line between said States is the center of the main channel of the said Missouri river, and the said defendant claiming and alleging that the boundary line between said States is the eastern bank of said Missouri river.

33 And thereupon your orator complains and alleges that Washington township is one of the political subdivisions of Doniphan county in the State of Kansas; and that that portion of plaintiff's railroad in the State of Kansas, and hereinafter referred to as the bridge over the Missouri river, is in said Washington township; that the eastern boundary of said State of Kansas at the point of the location of plaintiff's railroad and bridge is the center of the main channel of the said Missouri river; that the complainant's railroad crosses the Missouri river immediately west of the city of St. Joseph, and on leaving said township of Washington, in said Doniphan county at the center of the main channel of the Missouri river proceeds into the State of Missouri, and terminates at the said city of St. Joseph.

That a part of the said railroad of complainant in said Washington township in said Doniphan county consists of the aforesaid bridge across the Missouri river, one-half of which said bridge, to wit, that portion which lies between the west bank of the Missouri river, and the center of the main channel thereof, is in the State of Kansas in said Washington township, and that the other half of said bridge, to wit, that portion which lies east of the main channel of said Missouri river, and the eastern bank thereof, is in the State of Missouri.

That this complainant is now, and has been for a number of years constantly using said bridge for the running over the same its trains and engines, and using and operating said bridge as a part of its railroad. That it has laid upon said bridge a road-bed of ties and steel rails, over and upon which its trains and engines run.

3.

That in the year 1888, some time prior to the 20th of March, 1888, this complainant returned a sworn list and schedule of all its property and railroad, road-bed, rolling stock, right of way and buildings in the State of Kansas, to the auditor of said State; which return included all the property of this complainant situate in the State of Kansas and in said Washington township; and included also one-half of said bridge over the Missouri river at the point aforesaid; that is to say that part of the said bridge lying in the township of Washington, in the State of Kansas, and being that part lying between the western bank of said Missouri river, and the center of the main channel thereof.

34 That afterwards, to wit, on or before the 20th day of May, 1888, the lieutenant governor, the secretary of state, treasurer of State, auditor of State, and the attorney general respectively, of the State of Kansas, they then and there constituting the board of railroad assessors for said State, did duly assess and value for the purposes of taxation for the year 1888 all the property of this complainant in the State of Kansas, including the number of miles of its railroad track, railroad bed, right of way, and all other property owned by complainant in Kansas; and which State board of railroad assessors did assess and value as part of the property of complainant that part of its said bridge mentioned aforesaid which lies in the said township of Washington, in the county of Doniphan. And said board of railroad assessors after having valued and assessed all the property of this complainant in the said State of Kansas did, through the honorable, the auditor of the State make due return to the county clerk of said Doniphan county of said assessment and valuation of the property of this complainant.

And thereupon the county commissioners of said Doniphan county in the year 1888 did duly estimate and determine the amount of money to be raised by tax for all county purposes, and all other purposes which they were required by law to levy; and they did levy and extend the taxes for the year 1888 in and for said Doniphan county, in the various cities, towns, school districts and townships thereof against all the said property of complainant so assessed and valued by the said State board of railroad assessors; and thereupon the said county clerk of said Doniphan county did duly extend the levy so made by the said board of county commissioners against all the property of this complainant in said Doniphan county upon the basis of assessment and valuation estimated on said property by said State board of railroad assessors; and said county clerk did in due time thereafter deliver to the county treasurer of said Doniphan county the tax books or roll of his said county, showing the

amount of taxes levied and assessed against the property of this complainant in said county; which said taxes for the year 1888 amounted to the sum of $7,118.39 so extended and levied upon all the property owned by this complainant in said Doniphan county, including that portion of the bridge aforesaid lying between the western bank of the Missouri river and the center of the main channel thereof.

That afterwards, to wit, on the 20th day of December 1888 said taxes so levied and assessed against the property of this complainant became and were due and payable; and thereupon this complainant paid to the treasurer of said Doniphan county the
35 full amount of all said taxes so levied and assessed, and has his receipt therefor.

4.

That during the year 1888 one Thomas B. Hickman was the duly elected, qualified and acting trustee for the said township of Washington in said Doniphan county; that by virtue of his office as such trustee the said Hickman was also township assessor, and charged with the duty of listing and returning all property subject to taxation in his township during said year, except such property as belonged to railroad corporations. That on the 23rd day of April 1888 the said Hickman, without any authority of law whatever, made a pretended assessment of the entire bridge of complainant across the Missouri river at the point aforesaid; he, the said Hickman, then and there claiming and pretending that the eastern line of the State of Kansas where the same is crossed by the railroad bridge of this complainant was and is the eastern bank of said Missouri river; and he, the said Hickman, pretended to, and did assess the said entire bridge of complainant at a valuation of $300,000 for taxes for the year 1888; and which said list and assessment he made in writing and returned to the county clerk of said Doniphan county; and that afterwards to wit, at their regular meeting in the month of June 1888 the county commissioners of said Doniphan county, claiming and pretending that the eastern line of the said State of Kansas where the same is crossed by the said railroad of complainant was and is the eastern bank of the said Missouri river, did, without authority of law assume jurisdiction to act upon the said pretended assessment so made by the said Hickman trustee, and did then and there raise the said void assessment so made by said Hickman to the sum of $375,000; and this complainant appeared before said board of county commissioners, and protested to them that the said Hickman, trustee, had no jurisdiction to list and assess any of its said property in said Doniphan county; and that they, the said commissioners, had no jurisdiction over the said assessment of the property of this complainant in said Doniphan county; and protested to the said commissioners that in no event had the said Hickman, or the said board, or any other of the authorities of said Doniphan county, any jurisdiction to levy or extend any taxes whatever against that portion of complainant's

bridge lying east of the center of the main channel of said Missouri river.

But the said board of county commissioners as well as the other authorities of the said Doniphan county then and there, and still do, claim and pretend and set up and maintain that the east-
36 ern boundary of the said State of Kansas is the eastern bank of the said Missouri river at the said city of St. Joseph.

And thereupon after raising the said void assessments so made by the said Hickman by the said board of county commissioners of said Doniphan county, the said county clerk of said Doniphan county did extend all the taxes so levied by the said board of county commissioners for said Doniphan county against the said void assessment of $375,000 against the said bridge, the property of complainant, and delivered the tax books and tax-rolls of said county containing said extension and levy to the county treasurer of said Doniphan county for collection. And your orator having refused to pay the said taxes so levied and assessed by the said Hickman and the said board of county commissioners against the said bridge, afterwards, to wit, on the 14th day of January, 1889, the treasurer of said Doniphan county made out under his hand and seal and delivered to the defendant John Deveraux, the sheriff of said Doniphan county, a warrant for the collection of said illegal and void taxes so assessed and levied and charged up against the said property of this complainant.

And the said John Deveraux, sheriff, has levied upon the said bridge of complainant, has advertised the same for sale to make and raise and collect said illegal taxes amounting to the sum of $10,710.00, and has advertised said bridge for sale, and will on the 18th day of February, 1889, unless restrained by the order of this court, sell said bridge and put the purchaser thereof in possession of the same, and ousted the complainant therefrom; and will stop and prevent your orator from running its trains and engines over said bridge, and thus hinder and delay your orator from operating its said railroad, and will compel your orator to bring and become party to various suits at law.

And such sale by said sheriff will cast a cloud upon the title of your orator to said bridge, and cause to your orator a great and irreparable injury for which it has no adequate remedy at law.

5.

Your orator alleges that the said assessment and listing of said property so made by the said Thomas B. Hickman, trustee, and assessor, was illegal and void; that the returning of the said assessment to the county clerk of said Doniphan county by said Hickman, the raising of said void assessment by the county commissioners of said county, and the levying of taxes on said assessment by said commissioners, the extending of the taxes so levied on said void assessment by the said county clerk of said Doniphan
37 county, and his delivery of said tax-roll containing said void assessment to the county treasurer of said county, and the issuing of the warrant for the sale of the property of your orator

for said illegal taxes by said county treasurer, and the levying by the defendant in this case upon the property of your orator, were and are all and each illegal, null and void acts.

That your orator had already been assessed upon said property for the year 1888, and paid such assessment.

Your orator further alleges that that part of its said track and bridge which lies east of the center of the main channel of said Missouri river is in the State of Missouri; and that the proper taxing officers of said State did assess and value the property of complainant in the said State of Missouri for the year 1888; and did levy and extend taxes against all the property of your orator in said State of Missouri for said year; a part of the property of your orator in said State of Missouri being that portion of its said bridge lying east of the center of the main channel of said Missouri river, which taxes your orator has paid in full and has receipts therefor.

6.

Your orator alleges that it is ready and willing, and hereby offers to pay any part and all of said above-mentioned taxes so levied and assessed against said bridge if it shall be finally decided that said taxes, or any part thereof, were and are legal and binding upon your orator. But your orator alleges that under no circumstances could the authorities of Doniphan county, Kansas, levy and collect any taxes against any part of your orator's property not in the State of Kansas. And that only one-half of said bridge, as above set forth, is or was in the year 1888, in the State of Kansas.

7.

Your orator further alleges that neither the county nor township authorities, or assessors of said Doniphan county, have or had any authority or jurisdiction to levy, assess, extend, charge up any taxes whatever against any part of the said railroad bridge of your orator in said Doniphan county. That the said State board of railroad assessors of the said State of Kansas had exclusive jurisdiction for assessing the said property to your orator in said Doniphan county for the year 1888.

Wherefore, your orator prays that a temporary injunction may be granted herein, restraining the said defendant John Deveraux sheriff of Doniphan county, Kansas, his agents, deputies, servants and successors in office, and each of them, from offering for
38 sale or selling said railroad bridge of your orator, or any part thereof, or any other property of your orator, for the taxes assessed and levied against the said bridge of your orator for the year 1888, based on the said assessment made by said Hickman.

2.

That on a final hearing of this case that the said temporary injunction may be made perpetual.

3.

That your honors will find and decree that the boundary line between the State of Kansas and the State of Missouri, where the same is crossed by the said railroad bridge of your orator is the center of the main channel or thread of said Missouri river, and that only that part of your orator's railroad bridge lying west of the center of the main channel of said Missouri river is in the State of Kansas.

4.

That the said bridge of your orator over the said Missouri river is a part of its railroad, and is and was assessable in the State of Kansas for the year 1888 by the said board of railroad assessors of said State only.

5.

That the said assessment of the said bridge of your orator made by the said Thomas B. Hickman for the year 1888, the taxes levied and extended on such assessment, are illegal and void, and not chargeable to your orator or its property.

And that your orator may have such other, further and general relief in the premises as equity and good conscience may require and to your honors shall seem meet.

And may it please your honors to grant unto your orator the writ of injunction issued out of and under the seal of this honorable court, or issued by one of your honors according to the form of the stat-e in such case made and provided, directed to the said John Deveraux, sheriff of Doniphan county, Kansas, defendant, commanding, enjoining, restraining the said defendant, his agents, servants, deputies and successors in office, and each of them, from selling or offering for sale the aforesaid bridge of your orator, or any part thereof, or any other property of your orator for the taxes assessed against the said railroad bridge of your orator for the year 1888.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of,
39 and under the seal of this honorable court directed to the said John Deveraux, sheriff of Doniphan county, Kansas, defendant, commanding him on a day certain therein to be named and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises in this your orator's bill of complaint; but not under oath, an answer under oath being hereby expressly waived; and to stand to, perform and abide such further order, direction and decree as may be made against him. And your orator, as in duty sound, will ever pray.

JOHN M. RAGAN,
Solicitor for Complainant.

UNITED STATES OF AMERICA, }
District of Kansas, } ss:

John M. Ragan being first duly sworn upon his oath says that he is the general attorney and counsel of the above-named complainant corporation; that he has read the foregoing bill of complaint, and

knows the contents thereof, and that said bill, and the allegations thereof, are true of his own knowledge.

Affiant further says that this affidavit is made by him for the reason that Edwin McNeill, who is the general manager of the above-named complainant corporation, is now absent from the State of Kansas, and also from the State of Missouri where he resides, and is somewhere in the State of Illinois. And further affiant saith not.

JOHN M. RAGAN.

Subscribed in my presence by the said John M. Ragan, and sworn to by him before me this 7th day of February, 1889.

DAVID J. BREWER,
Circuit Judge.

FEBRUARY 7TH, 1889.

Let defendant show cause before me on Monday, February 18th, at 10 a. m., at my chambers in Leavenworth city, Kansas, why preliminary injunction should not issue as prayed for and in the meantime he is restrained as prayed for on complainant's giving bond in the sum of $5,000.

DAVID J. BREWER,
Circuit Judge.

Indorsed: No. 6279. St. Joseph & Grand Island Railroad Company *vs.* John Deveraux, sheriff of Doniphan county, Kansas. Bill. Filed Feb. 8, 1889. Geo. F. Sharitt, clerk. John M. Ragan, compl't's sol'r.

40 In the Circuit Court of the United States for the District of Kansas.

THE SAINT JOSEPH AND GRAND ISLAND RAILROAD COMPANY
vs.
JOHN DEVERAUX, Sheriff of Doniphan County, Kansas.

I enter myself security for costs in said case, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court. And in default of payment by the plaintiff of any costs ordered or adjusted to be paid by it, I hereby agree and stipulate that execution may issue against my property for any costs taxed against me.

JOHN M. RAGAN.

Dated 8th day of February, 1889.

No. 6279. Sec. for costs. Filed Feb. 8, 1889. Geo. F. Sharitt, clerk.

Chancery Subpœna.

UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

The United States of America to John Deveraux, sheriff of Doniphan county, Kansas, Greeting:

We command you and every of you, that you appear before our judge of our circuit court of the United States of America for the district of Kansas, at the city of Topeka, in said district, on the first Monday in the month of March next, to answer the bill of complaint of St. Joseph and Grand Island Railroad Company this day filed in the clerk's office of said court, in said city of Topeka, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Kansas to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the city of Topeka, [SEAL.] in said district, this eighth day of February in the year of our Lord one thousand eight hundred and eighty-nine.

GEO. F. SHARITT, *Clerk.*

MEMORANDUM.—The above-named defendant is notified that unless he enter his appearance in the clerk's office of said court, at the city of Topeka aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

GEO. F. SHARITT, *Clerk.*

41 *U. S. Marshal's Return.*

DISTRICT OF KANSAS, *ss:*

Received the within writ February the eight 1889, and executed the same as follows, to wit: Served on the within-named John Deveraux, sheriff of Doniphan county, Kansas on the ninth day of February 1889 at Troy, in Doniphan county, State and district of Kansas, by delivering to him personally a true and certified copy of this writ with all the indorsements thereon, and also at the same time and place delivered to said defendant a true and certified copy of the bill in chancery.

W. C. JONES,
U. S. Marshal,
By CHAS. HOWARD, *Deputy.*

Service	$4 00
Travel	4 56
	$8 56

Received from Geo. F. Sharitt clerk circuit court U. S.

W. C. JONES, *U. S. Marshal*,
By CHARLES CURRIER, *Deputy*.

No. 6279. Circuit court United States, district of Kansas. St. Joseph & Grand Island Railroad Company *vs.* John Deveraux, sheriff of Doniphan county, Kansas. Chancery subpœna. Returnable to rule day, first Monday in March, A. D. 1889. Geo. F. Sharitt, clerk. Filed Febr'y 11, A. D. 1889. Geo. F. Sharitt, clerk. John M. Ragan, comp't's sol.

Know all men by these presents—

That we the Saint Joseph and Grand Island Railroad Company as principal and John R. Mulvane as surety are held and firmly bound unto John Deveraux, sheriff of Doniphan county, Kansas, and his successors in office in the penal sum of five thousand (5,000) dollars for the payment of which we hereby bind ourselves.

The condition of this obligation is as follows: The said Saint Joseph and Grand Island Railroad Company has commenced a suit in the circuit court of the United States within and for the district of Kansas against the said John Deveraux, sheriff of Doniphan county, Kansas; and said Saint Joseph and Grand Island Railroad Company has caused to be issued and obtained in said case an injunction or restraining order directed to said John Deveraux restraining him, his deputies, agents, servants and successors from offering for sale or selling a certain bridge or any part thereof
42 over the Missouri river at Saint Joseph belonging to said Saint Joseph and Grand Island Railroad Company.

Now then we the said Saint Joseph and Grand Island Railroad Company as principal and John R. Mulvane as surety do hereby undertake and promise to pay to said John Deveraux, sheriff of Doniphan county, Kansas, or his successor in office all costs and damages he may sustain by reason of the issuing of said restraining order if it shall be finally decided that such restraining order ought not to have been granted.

Witness our hands this eight day of February, 1889.

SAINT JOSEPH AND GRAND ISLAND
RAILROAD COMPANY,
By JOHN M. RAGAN, *Gen'l Att'y*.
J. R. MULVANE.

Indemnity by Schuster, Hax & Co., of St. Joe, Mo.

Indorsed: No. 6279. Bond. Filed Feb. 8, 1889. Geo. F. Sharitt, clerk.

In the Circuit Court of the United States within and for the District of Kansas.

THE SAINT JOSEPH AND GRAND ISLAND RAILROAD COMPANY, Complainant,
vs.
JOHN DEVEREAUX, Sheriff of Doniphan County, Kansas, Defendants.

To John Devereaux, sheriff of Doniphan county, Kansas, defendant in above-entitled action, Greeting:

Whereas the Saint Joseph and Grand Island Railroad Company has filed its bill on the chancery side of this court against you, a copy of which bill is hereto attached praying that you and your agents, deputies and successors in office be perpetually restrained and enjoined from offering for sale or selling the bridge or any part thereof over the Missouri river at or near Saint Joseph, Missouri, known as the Saint Joseph and Grand Island Railroad Company's bridge.

And whereas on the 7th day of February 1889 at his chambers in the city of Leavenworth City, Kansas, the Honorable David J. Brewer, circuit judge of the 8th judicial circuit of the United States made in said case an order in words and figures as follows:

43 "FEBRUARY 7TH, 1889.

Let defendant show cause before me on Monday, February 18th (1889) at 10 a. m. at my chambers in Leavenworth city, Kansas, why preliminary injunction should not issue as prayed for and in the meantime be restrained as prayed for on complainant giving bond in the sum of $5,000.

DAVID J. BREWER,
Circuit Judge."

And whereas said complainant has given bond as required by said order—

Now therefore we do hereby enjoin — command you, the said John Devereaux, sheriff of Doniphan county, Kansas, your deputies agents and successors in office to absolutely desist and refrain from offering for sale or selling the bridge or any part thereof across the Missouri river between said Doniphan county, Kansas, and Saint Joseph, Mo., lately advertised by you for sale on February 18th, 1889, until the further order of our said court in the premises, and this command and order you will in nowise fail to obey under the penalty of being adjudged in contempt of our court.

Witness the Hon. Melville W. Fuller, Chief Justice of
[SEAL.] the Supreme Court of the United States of America, at the city of Topeka, in said district, this 8th day of February, A. D. 1889.

GEO. F. SHARITT, *Clerk.*

Indorsed: No. 6279. St. Joseph & Grand Island Railroad Company *vs.* John Devereaux, sheriff. Order. Filed Feb. 11, 1889. Geo. F. Sharitt, clerk.

THE UNITED STATES OF AMERICA, } *ss, sct:*
District of Kansas, }

In the Circuit Court of the United States within and for the District of Kansas Aforesaid.

ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, Complainant, }
vs.
JOHN DEVEREAUX, Sheriff of Doniphan County, Kansas, Defendant. }

The Answer of John Devereaux, Defendant, to the Bill of Complaint of The St. Joseph and Grand Island Railroad Company, Complainant.

The defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception
44 which can or may be had or taken to the many errors uncertainties and other imperfections in the said bill of complaint contained, for answer thereto or unto so much thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant for answering saith:

The said defendant admits the corporate capacity of the complainant as averred in the bill herein and the custody and the ownership of the railway of the said Co. from the State of Nebraska to a point in Kansas opposite to the city of St. Joseph in the State of Missouri, but denies that the said railway runs or extends further than to a point in Kansas near the Missouri river where the railroad wagon and toll-bridge begins, and from which point the same, the said wagon and railroad bridge, is constructed over the said Missouri river to the said city of St. Joseph, Mo.

And the said defendant further admits that he is the duly elected and qualified sheriff of the said county of Doniphan in the State of Kansas, as averred in the said bill, and that the amount in controversy is as stated by complainant.

Further answering the defendant avers that there is no such tribe as the Platte Indians, nor ever was there any such band or treaty-making race with whom any treaty or treaties were made whereby the boundaries of the State of Missouri were fixed and defined.

That contrary to the averments of the complainant the several treaty provisions made in the purchase of the so-called Platte purchase the laws of the United States and of the State of Missouri and the statutes defining the boundaries of Kansas, fix the line of demarcation between the said States at the east bank of the Missouri river. That the courts in the State of Missouri hold and have held and adjudicated that they have no jurisdiction over the said property the said St. Joseph &c. bridge and that the jurisdiction over the same is within the State of Kansas, and refuse to entertain or to direct proceedings in condemnation of rights of way for tele-

graph and telephone companies and their lines across the said bridge.

That the representatives of the corporation owning and controlling said bridge have heretofore habitually asserted and maintained that the said property is in Kansas and thus first led the officers of the county of Doniphan and its said township of Washington to so assess the same for taxation. That the said bridge was constructed under a charter obtained under and by virtue of the laws of the State of Kansas for the corporate purpose " to construct and maintain a bridge over the Missouri river to extend from a point
45 in Doniphan county in the State of Kansas, opposite to the city of St. Joseph across the said Missouri river to the city of St. Joseph aforesaid for public use, for the crossing of persons and property " and also under and by virtue of an act of Congress approved July 14th 1870. (See U. S. St. at Large vol. 16, p. 275.) By which authority was granted to build and maintain a bridge across the Missouri river at or near St. Joseph in the State of Missouri and to construct ways for wagons carriages and foot passengers, charging therefor and receiving reasonable tolls.

That said bridge is and from the completion thereof has been used for the purpose of crossing persons and property (for which " tolls " have been demanded and received) by the corporations, the predecessors of complainant, and the prior owners thereof, and is now and constantly has been since the construction thereof the common thoroughfare for teams carriages and the ordinary vehicles used in travel and the transportation of men and merchandise in transit between the States of Kansas and Missouri at the points aforesaid, and by the plaintiff and complainant for its coaches cars and enginery, as well as by other railroad companies the latter, and all railroad corporations, paying to complainant full compensation for such use and carriage.

That from these sources the said complainant has derived great pecuniary benefit and received from other corporations and the general public large sums of money, aside and distinct from the revenue and receipts from and on account of the railroad of the complainant leading and extending to the site of the said bridge from the said State of Nebraska as aforesaid.

That under the laws of Congress fixing the boundaries of the State of Missouri and as the same were adjusted after the so-called Platte purchase from the Sac and Fox Indians and the acts of the State of Missouri assenting thereto, the line of the boundary of *of* the county of Buchanan in said State of which the said city of St. Joseph is the shire town and of all that portion of said State of Missouri formerly included in the reservation of said Indians and the purchase aforesaid was on the east bank of the Missouri river and the boundaries of said State extended thereto and no further. And that the State of Kansas and its boundaries on the north and east extend to the east bank of the said Missouri river the acts of Congress defining the Territory of Kansas in the first instance and afterwards in establishing its confines as a State fixing and extending the same to the western boundary of the State of Missouri.

46 And the defendant denies that, the said complainant or the said bridge company or its successors or any person or persons or any corporations ever listed or returned the said bridge property to the board of railroad assessors of the said State of Kansas as is set forth in its said bill of complaint herein or in any manner or form whatsoever, nor did they so list and return the same for taxation to the officers of the said Washington township or to the county of Doniphan aforesaid, but wholy failed and neglected so to do.

And the said defendant alleges that the said board of railroad assessors of the State of Kansas did not as averred assess the said bridge and have no power so to do, and that that would be beyond the scope of their functions and duties as such assessors, but that if otherwise defendant alleges the truth to be that the complainant avoiding and for the purpose to evade such assessment kept from and out of the list — their property in the said county of Doniphan and the said t'p of Washington therein all mention of the said bridge, and that in the property assessed by the said assessors nothing but the road-bed, side tracks, switches, tanks and depot buildings, &c., &c., appear for the purpose as shown by the return of the complainant now on file in the office of the secretary of state of the State of Kansas. That the initial point of the right of way and railroad of complainant is the west bank of the Missouri river where the said bridge and its approach joins the same. And that the said bridge property, except as assessed by the said Hickman assessor of said Washington township in the said county of Doniphan in the State of Kansas and as his said assessment was raised by the board of county commissioners of said Doniphan county sitting as a board of equalization, was not assessed, nor was there any tax levied thereon for the year 1888 except as aforesaid, nor has any of the tax due from the complainant on said bridge been paid to the treasurer of the said Doniphan county, nor any part thereof, nor has any receipt been given by the said treasurer therefor.

And further answering the defendant avers that, heretofore the complainant and its predecessors in interest, in and about the said bridge have year by year paid without dissent taxes assessed on the said property—its railroad, side tracks, depots, water tanks, &c., particularly and specifically included in the list and return to and the assessment made by the board of railroad assessors of the State, the same being over the same extent of roadway and mileage, to wit, extending from the said bridge to the limit of the territory of the said county of Doniphan.

47 That the Chicago, Kansas and Nebraska railway enters the said county of Doniphan over and by means of the said bridge and thence traverses the said county of Doniphan for a distance of about thirty miles, and is assessed and pays taxes on its road in said county to about the same amount as is paid for the same purpose by the complainant on its railroad. That the length of the two railroads is about equal, both paying in taxes for the several railroads about the same amount. But that, the said C., K. & N. R'y use and transport their trains upon the said bridge under a lease of the right of transit over and across the same for a period of five

years, from about —— —, 1887, and this at a yearly rental of $17,500, which sum is by the said last-named railroad paid to the complainant as the same accrues.

And the said defendant further answering avers that he is informed and believes the same to be true, that the income and receipts to the complainant of and from the travel of wagons and passengers and animals over and on account of the said bridge exceeds the sum of fifteen thousand dollars per annum.

That if there is any other or further thing that the complainant's said bill of complaint contains material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, traversed and avoided or denied the same is not true according to the defendant's best knowledge and belief, all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays that he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN DEVEREUX, *Sheriff.*
A. S. BREWSTER AND
J. H. GILPATRICK,
Of Counsel.

THE UNITED STATES OF AMERICA, }
County of Doniphan, District and State of Kansas, } *ss:*

John Deveraux, of lawful age, being first duly sworn on oath, says: That he is the defendant named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except so far
48 as the matters therein are stated on information and belief and as to those matters he verily believes it to be true.

—— ——.

Subscribed and sworn to before me this — day of February, A. D. 1889.

—— ——.

Indorsed: No. 6279. The St. Joseph and Grand Island R'y Co. *vs.* John Deveraux, sh'ff of Doniphan Co., Ks. Answer in chancery. Filed Feb. 19, 1889. Geo. F. Sharitt, clerk.

UNITED STATES OF AMERICA, }
District of Kansas. }

THE ST. JOSEPH & GRAND ISLAND COMPANY }
vs.
JOHN DEVERAUX, Sheriff of Doniphan County. }

AT CHAMBERS, *Feb'y* 18, 1889.

This case coming on for hearing on application for a temporary injunction; it is ordered that such injunction issue as prayed for on complainant's giving within five days a good and satisfactory

46 And the defendant denies that, the said complainant or the said bridge company or its successors or any person or persons or any corporations ever listed or returned the said bridge property to the board of railroad assessors of the said State of Kansas as is set forth in its said bill of complaint herein or in any manner or form whatsoever, nor did they so list and return the same for taxation to the officers of the said Washington township or to the county of Doniphan aforesaid, but wholy failed and neglected so to do.

And the said defendant alleges that the said board of railroad assessors of the State of Kansas did not as averred assess the said bridge and have no power so to do, and that that would be beyond the scope of their functions and duties as such assessors, but that if otherwise defendant alleges the truth to be that the complainant avoiding and for the purpose to evade such assessment kept from and out of the list — their property in the said county of Doniphan and the said t'p of Washington therein all mention of the said bridge, and that in the property assessed by the said assessors nothing but the road-bed, side tracks, switches, tanks and depot buildings, &c., &c., appear for the purpose as shown by the return of the complainant now on file in the office of the secretary of state of the State of Kansas. That the initial point of the right of way and railroad of complainant is the west bank of the Missouri river where the said bridge and its approach joins the same. And that the said bridge property, except as assessed by the said Hickman assessor of said Washington township in the said county of Doniphan in the State of Kansas and as his said assessment was raised by the board of county commissioners of said Doniphan county sitting as a board of equalization, was not assessed, nor was there any tax levied thereon for the year 1888 except as aforesaid, nor has any of the tax due from the complainant on said bridge been paid to the treasurer of the said Doniphan county, nor any part thereof, nor has any receipt been given by the said treasurer therefor.

And further answering the defendant avers that, heretofore the complainant and its predecessors in interest, in and about the said bridge have year by year paid without dissent taxes assessed on the said property—its railroad, side tracks, depots, water tanks, &c., particularly and specifically included in the list and return to and the assessment made by the board of railroad assessors of the State, the same being over the same extent of roadway and mileage, to wit, extending from the said bridge to the limit of the territory of the said county of Doniphan.

47 That the Chicago, Kansas and Nebraska railway enters the said county of Doniphan over and by means of the said bridge and thence traverses the said county of Doniphan for a distance of about thirty miles, and is assessed and pays taxes on its road in said county to about the same amount as is paid for the same purpose by the complainant on its railroad. That the length of the two railroads is about equal, both paying in taxes for the several railroads about the same amount. But that, the said C., K. & N. R'y use and transport their trains upon the said bridge under a lease of the right of transit over and across the same for a period of five

years, from about —— —, 1887, and this at a yearly rental of $17,500, which sum is by the said last-named railroad paid to the complainant as the same accrues.

And the said defendant further answering avers that he is informed and believes the same to be true, that the income and receipts to the complainant of and from the travel of wagons and passengers and animals over and on account of the said bridge exceeds the sum of fifteen thousand dollars per annum.

That if there is any other or further thing that the complainant's said bill of complaint contains material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, traversed and avoided or denied the same is not true according to the defendant's best knowledge and belief, all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays that he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN DEVEREUX, *Sheriff.*
A. S. BREWSTER AND
J. H. GILPATRICK,
Of Counsel.

THE UNITED STATES OF AMERICA, }
County of Doniphan, District and State of Kansas, } *ss:*

John Deveraux, of lawful age, being first duly sworn on oath, says: That he is the defendant named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except so far as the matters therein are stated on information and belief and as to those matters he verily believes it to be true.

48

—— ——.

Subscribed and sworn to before me this — day of February, A. D. 1889.

—— ——.

Indorsed: No. 6279. The St. Joseph and Grand Island R'y Co. *vs.* John Deveraux, sh'ff of Doniphan Co., Ks. Answer in chancery. Filed Feb. 19, 1889. Geo. F. Sharitt, clerk.

UNITED STATES OF AMERICA, }
District of Kansas. }

THE ST. JOSEPH & GRAND ISLAND COMPANY }
vs.
JOHN DEVERAUX, Sheriff of Doniphan County. }

AT CHAMBERS, *Feb'y* 18, 1889.

This case coming on for hearing on application for a temporary injunction; it is ordered that such injunction issue as prayed for on complainant's giving within five days a good and satisfactory

bond in the penal sum of twenty thousand dollars with two sureties to be approved by the clerk of this court and conditioned according to law and it is further ordered that a copy of this order and a statement of the questions at issue be given forthwith to the attorneys general of the States of Kansas and Missouri respectively.

DAVID J. BREWER,
Circuit Judge.

Indorsed: No. 6279. Order. Filed Feb. 19, 1889. Geo. F. Sharitt, clerk.

Know all men by these presents: That we, the Saint Joseph and Grand Island Railroad Company, as principal, and S. A. Walker, J. Colhoun, A. N. Schuster and J. R. Mulvane, as sureties, are held and firmly bound unto John Devereaux, sheriff of Doniphan county, Kansas, and his successors in office in the penal sum of twenty thousand ($20,000) dollars for the payment of which well and truly to be made, we hereby bind ourselves.

Dated this the 18th day of February, 1889.

The condition of the obligation is as follows:

Whereas, the said Saint Joseph and Grand Island Railroad Company has filed its bill in chancery, in the circuit court of the United States within the district of Kansas against said John Devereaux, sheriff, as aforesaid; and

Whereas, the Honorable David J. Brewer, circuit judge of
49 the — circuit of the United States did at chambers on the 18th day of February, 1889, in said cause, at the request of the said Saint Joseph and Grand Island Railroad Company grant a temporary injunction against said John Devereaux, sheriff as aforesaid, restraining him, his deputies, agents, servants and successors in office from selling or offering for sale the railroad bridge over the Missouri river at Saint Joseph, Missouri, known as the railroad bridge of the St. Joseph and Grand Island Railroad Company:

Now, therefore, we, the Saint Joseph and Grand Island Railroad Company, as principal, and S. A. Walker, J. Colhoun, A. N. Schuster, and J. R. Mulvane, as sureties, do hereby undertake and promise to the said John Devereaux, sheriff as aforesaid and his successors in office, to pay him all costs and damages which he may sustain by reason of the granting of said temporary injunction, if it shall be finally decided that said temporary injunction ought not to have been granted.

THE SAINT JOSEPH AND GRAND
ISLAND RAILROAD COMPANY,
By JOHN M. RAGAN, *General Attorney.*
S. A. WALKER.
J. COLHOUN.
A. N. SCHUSTER.
J. R. MULVANE.

Dated, Topeka, Kansas, February 18th, 1889.

This bond and sureties hereby approved this 20″ day of February, 1889.

GEO. F. SHARITT,
Clerk U. S. C. Court, District of Kansas.

Indorsed: No. 6279. Saint Joseph and Grand Island Railroad Company *vs.* John Devereaux, sheriff Doniphan Co. Injunction bond. Filed Feb. 20, 1889. Geo. F. Sharitt, clerk.

In the Circuit Court of the United States, District of Kansas.

ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, Complainant,
vs.
JOHN DEVEREAUX, Sheriff of Doniphan County, Kansas, Defendant.

The Replication of the Complainant to the Answer of John Deveraux, Sheriff of Doniphan County, Kansas, Defendant.

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of
50 the said answer, for replication thereunto, saith that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traveresed or denied, is true; all which matters and things, this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

JOHN M. RAGAN,
Solicitor for Complainant.

Indorsed: No. 6279. St. Joseph & Grand Island Railroad Company *vs.* John Deveraux, sheriff of Doniphan county, Kas. Replication. Filed Apr. 1, 1889. Geo. F. Sharitt, clerk. John M. Ragan, compl't's solic.

UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

Stipulation of Facts.

THE ST. JOSEPH & GRAND ISLAND R. R. COMPANY, Complainant,
vs.
JOHN DEVEREAUX, Sheriff of Doniphan —, Kansas, Defendant.

It is hereby stipulated by and between the parties hereto, that the following shall be facts conceded at and in the trial of the issues involved in the above-entitled cause:

1st. That the complainant, The St. Joseph & Grand Island Rail-

road Company, is the owner and lawfully in possession and enjoyment of the bridge over the Missouri river at St. Joseph, Missouri, the western terminus of which is in Doniphan county, Kansas.

2nd. That said complainant operates its trains over said bridge as a part of its railroad, and likewise charges and collects tolls for the passage of foot passengers, wagons and carriages over the same, and derives an annual revenue from the general public of about nine thousand dollars ($9,000.00) a year.

3rd. That the general expense to the complainant, attending the operation of said bridge is about four thousand dollars ($4,000.00) for the year.

4th. That the Chicago, Kansas & Nebraska Railway Company also uses said bridge under a lease and license from the
51 complainant for the operation of its trains across the same at an annual rental of seventeen thousand five hundred dollars ($17,500.00) a year.

5th. That all that portion of said bridge which lies west of the center of the draw-span is west of the center of the main channel of the Missouri river, and is 926 feet in length. And all that portion of said bridge which lies east of the center of the draw-span is east of the center of the main channel of said Missouri river, and is 462 feet in length.

6th. That said bridge has no trestle-work on either end, and is composed of five spans.

7th. That the complainant through its proper officers for the year 1888 made due return of all its railroad property, tracks and side tracks, to the State board of railroad assessors for the State of Kansas, and which return included as a part of its road-bed, that part of the bridge lying west of the center of the draw-span aforesaid.

8th. That the State board of railroad assessors for the State of Kansas for the year 1888 duly listed and valued the property of the complainant in the State of Kansas, and the proper officers of the State of Kansas, and especially in Doniphan county in the State of Kansas, extended taxes against the property of the complainant so returned to the State board of railroad assessors and listed to them, and the complainant paid to the county treasurer of Doniphan county, Kansas, in the month of ——, 1888, all the taxes so levied and assessed when due.

9th. But that the return made by the complainant, The St. Joseph & Grand Island Railroad Company, and the list furnished to the board of railroad assessors of the State of Kansas as aforesaid did not in terms specify the St. Joe bridge aforesaid or any portion of the same, as such; but, as so many miles and as if the same, the said St. Joseph bridge, was a part of the road-bed and side tracks of the said complainant's railway.

10th. That the complainant in the year 1888 by its proper officers duly returned to the State board of railroad assessors for the State of Missouri for valuation and assessment, all its railroad bed and side tracks in the State of Missouri, and including that part of the said bridge which lies east of the center of the draw-span thereof, and that the said railroad assessors of Missouri duly listed all the

property of complainants so returned to them, and the taxes for 1888 were duly extended against said property and paid by complainant when due to the proper officers of Buchanan county, in the State of Missouri, the eastern terminus of complainant's railroad.

52 11th. That the board of railroad assessors for the State of Kansas in the tax levied and assessed by them upon the return as aforesaid made by the complainant, did not assess the said bridge or any part thereof as bridge property; their assessment covering only the mileage of railroad and side tracks as returned by the complainant as aforesaid.

12th. That the said bridge when constructed cost seven hundred and fifty thousand dollars ($750,000.00) that its present value is three hundred and fifty thousand dollars ($350,000.00).

13th. That heretofore to wit: in the year 1887 Col. John Doniphan was the general attorney for the complainant and that he gave it as his opinion to the county authorities of Doniphan county, Kansas, that the whole of said bridge was in Kansas; and that acting upon that opinion the authorities of Doniphan county, Kansas, assessed the entire bridge as being in Kansas, and at the same time the proper authorities in the State of Missouri assessed one-half of it as being in the State of Missouri, both of which taxes the said complainant paid.

Office of county attorney of Doniphan county, A. S. Brewster, county attorney.

13½. It is further stipulated by and between the parties hereto, that if the east bank of the Missouri river is the east boundary of the State of Kansas between the counties of Buchanan Missouri, and Doniphan Kansas, and if said bridge constitutes no part of the railroad of the St. Joseph and Grand Island Railroad Company, and was not assessable by the board of railroad assessors of the State of Kansas alone; and, if the local authority or assessor in Doniphan county Kansas had authority to assess said bridge, then the assessment so made in 1888 by said local authority was regular in form and valid.

14th. That said bridge was for the year 1888 listed for taxation in said Washington township, Doniphan county, Kansas, and valued by the assessor thereof at the sum of $300,000.

15th. That afterward and on June 5th 1888 the complainant by its attorney James Limbird appeared before the board of county commissioners of said Doniphan county, duly sitting as a board of equalization, and petitioned said board to reduce the valuation placed on said bridge by said township trustee, to the sum of $175,000, and represented to said board that one-half only of said bridge was located in said Doniphan county and assessable therein.

53 That on the hearing of said petition, said board held that all of said bridge west of the east bank of the Missouri river is in the State of Kansas and should be listed and assessed in Doni-

phan county; that the valuation of said bridge was too low, and that the valuation should be raised to the sum of $350,000.

THE ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY,
By JNO. M. RAGAN, *Gen'l Att'y.*
JOHN DEVEREAUX,
By J. H. GILLPATRICK, *Of Counsel.*

Indorsed: No. 6279. St Joseph & Grand Island Railroad Co. *vs.* John Devereaux sh'ff Doniphan Co. Kansas. Stipulation of facts. Filed June 3, 1889. Geo. F. Sharitt, clerk.

THE UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

In the Circuit Court of the United States within & for the District Aforesaid.

THE ST. JOSEPH AND GRAND ISLAND R'Y Co., Compl't,
vs.
JOHN DEVERAUX, Sheriff of the County of Doniphan, Kansas, Def't.

And now comes the State of Kansas by L. B. Kellogg attorney general, and appearing in this cause in compliance with the order and suggestion of the court heretofore made herein avers that under the act of —— admitting the State into the Union and defining the territory and the boundaries of the State the said State of Kansas asserts, claims and maintains and ever since said admission has claimed asserted and maintained jurisdiction and authority over all that territory including the bed of the Missouri to the east shore thereof as by the letter and spirits of the laws defining the boundary of the said State of Kansas, the said State is by right entitled to do.

L. B. KELLOGG,
Attorney General.
By J. H. GILLPATRICK,
Ass't — Gen'l.

Indorsed: No. 6279. The St. Joseph & Grand Island R'y Co. *vs.* John Deveraux sheriff. Answer of the State of Kansas. Filed Nov. 27, 1889. Geo. F. Sharitt, clerk. L. B. Kellogg, att'y ge'l & J. H. Gillpatrick for the State.

54 THE UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

In the Circuit Court within and for the District Aforesaid.

THE ST. JOE & GRAND ISLAND RAILWAY CO.
vs.
JOHN DEVERAUX, Sheriff of Doniphan Co., Kas.

As an addition to the — paragraph of the agreed statement of facts heretofore filed herein the following is suggested, viz:

And further the complainant collects the sum of 25 cts. in addition to the regular fare of three cents per mile from each and every passenger traveling over its road and across said bridge.

And as additional paragraphs to the agreed statement of facts filed the following is suggested viz:

That the complainant's railroad was built and is operated under a charter authorizing the construction and operation of a railroad running westward from the west bank of the Missouri river at Elwood in the State of Kansas.

That said bridge was built by an incorporated company other than the complainant's company, and which was not a railroad company, as a toll-bridge for railroads and carriages.

A. L. WILLIAMS,
Att'y for Compl't.
L. B. KELLOGG, *Att'y Gen'l.*
By J. H. GILLPATRICK, *Ass't.*

Indorsed: No. 6279. The St. Joseph & Grand Island R'y Co. *vs.* John Deveraux, sheriff, &c. Additional agreed facts. Filed Nov. 27, 1889. Geo. F. Sharitt, clerk.

Opinion.

In the Circuit Court of the United States for the District of Kansas.

THE ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, Complainant,
against
JOHN DEVERAUX, Sheriff of Doniphan County, Defendant.

BREWER, *C. J.*:

This is a bill filed by complainant to enjoin the collection of taxes on a bridge crossing the Missouri river at St. Joseph.
55 The entire bridge was assessed by the county authorities of Doniphan county as being an independent structure and wholly within the limits of the county. The bridge was built under a special charter, but afterwards became the property of the railroad company, the complainant. Complainant returned the bridge to the railroad assessors of the State as a part of its mileage, and without in anywise specifying that it was a bridge. It cost over half a million, is now worth over three hundred thousand and is used not simply as a railroad bridge, but also for general travel. It crosses the Missouri river from the city of St. Joseph Missouri to the Kansas shore.

Two questions are presented. First, Is it wholly within the county of Doniphan; and that depends upon where the boundary line between the States of Kansas and Missouri is; whether in the center of the main channel, or on the east bank of the river. Second, Did the return of this as a part of the R. R. track exempt it from subjection to taxation as an independent structure in Doniphan county.

With respect to the latter question there can be little doubt. The bridge was not constructed as a part of the railroad. It is a costly structure used for general purposes of travel; and the fact that the railroad company has its rails upon and runs its cars across it does not destroy its original character as an independent structure. It is clearly subject to local taxation.

The first question is, however, one of difficulty. Historically the original western boundary of the State of Missouri was defined by a "meridian line passing through the middle of the mouth of the Kansas river where the same empties into the Missouri river, thence from the point aforesaid north along the said meridian line to the intersection of the parallel of latitude which passes through the rapids of the River Des Moines." Act of March 6th, 1820.

This left a narrow strip between such boundary and the Missouri river. At the session of 1834–'5 an amendment of the constitution of Missouri was adopted, section four of which read as follows:

"SEC. 4. That the boundary of the State be so altered and extended as to include all that tract of land lying on the north side of the Missouri river, and west of the present boundary of this State, so that the same shall be bounded on the south by the middle of the main channel of the Missouri river, and on the north by the present northern boundary line of the State, as established by the constitution, when the same is continued in a right line to the west, or to include so much of said tract of land as Congress may assent."

56 And by the act of Congress approved June 7th, 1836, this strip above mentioned, known as the Platte purchase was ceded to the State of Missouri. The language of the act is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when the Indian title to all the lands lying between the State of Missouri and the Missouri river shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the State of Missouri, and the western boundary of said State shall be then extended to the Missouri river, reserving to the United States the original right of soil in said lands, and of disposing of the same: Provided, that this act shall not take effect until the President shall by proclamation, declare that the Indian title to said lands has been extinguished; nor shall it take effect until the State of Missouri shall have assented to the provisions of this act."

Now the contention is, that by this act the western boundary was fixed at the east bank of the river. This I think is a mistake, and that the center of the channel is the boundary line and the limit of the cession made by this act. It will be seen that the petition was for a tract bounded by the middle of the channel of the Missouri river, and the grant of jurisdiction was over the lands "between" the old State line and "the Missouri river" and the western boundary was "extended to the Missouri river" and this grant was made and its boundary fixed obviously in response to the petition. Counsel for the defendant urge that this shall be taken as a grant from one proprietor to another, while to my mind it is to be re-

garded not only in the light of a grant, but also as an act by competent authority establishing the boundary line of a State, independent in some respects, but within the general jurisdiction of the authority making the designation. It is true there is a cession of jurisdiction and therefore something in the nature of a grant. So there is whenever any new State is carved out of the Territories. The new political organization is granted jurisdiction over the prescribed territory, but after all the main idea is the governmental one, the declaration of the boundaries of the new jurisdiction. It is true here was a State already in existence and jurisdiction over this Territory was transferred to it, and therefore there is in it more of the nature of a grant; but even in this case it is also to be regarded as a governmental declaration of the boundary. It will be noticed that the cession is to the river and not to the bank. The words are general. There are no special words of exception or limitation.

Now in the case of Jones *vs.* Soulard, 24 Howard 41, the
57 question was presented as to the eastern boundary of the corporate limits of the city of St. Louis. The calls for boundary in the charter were:

"Beginning at Antoine Roy's mill on the bank of the Mississippi thence running six arpens west; thence south on said line of sixty arpens in the rear, until the same comes to the Barrieu Donoyer, thence due south until it comes to the Sugar Loaf thence due east to the Mississippi, from thence by the Mississippi to the place first mentioned."

And upon this the Supreme Court adjudged the boundary the center of the channel, saying in the opinion:

"Many authorities resting on adjudged cases have been adduced to us in the printed argument presented by the counsel of the defendant in error, to show that from the days of Sir Matthew Hale to the present time all grants of land bounded by fresh-water rivers, where the expressions designating the water line are general, confer the proprietorship on the grantee to the middle thread of the stream, and entitle him to the accretions. We think this as a general rule too well settled, as part of the American and English law of real property, to be open to discussion.

In the case of Howard *vs.* Ingersoll, 13 How. 381, where the question was as to the boundary between the States of Alabama and Georgia Nelson, judge, in a separate opinion thus states the law:

"Where land adjoining a fresh-water river or above tide water is described as bounded by a monument, whether natural or artificial, such as a tree or stake standing on the bank, and a course is given as running from it up or down the river to another monument standing upon the bank, these words necessarily imply as a general rule that the line is to follow the river according to its meanderings and turnings, and the grantee takes to the middle of the river. Such is the uniform construction given to this description where the common law prevails. It has been repeatedly applied to grants abutting the River Missouri, the Mississippi, the Hudson, the Connecticut, and other great rivers in the United States

above tide water; 3 Kent Com. 427, 428, 429, and notes. Angell on Water Courses, chapter I."

Now there can be no doubt as to the general doctrine; and the authorities cited in the briefs of counsel in the 24 How. *supra*, show the application of that doctrine under a great variety of circumstances. The case of Howard *vs.* Ingersoll, *supra*, although locating the boundary line on the bank rather than in the middle of
58 the Chattahoochee river, still recognizes the general doctrine and rests upon the special language in the cession. The language there was as follows:

"West of a line running on the western bank of the Chattahoochee river where the same crosses the boundary between the United States and States and Spain, running up said river and along the west bank thereof."

And Justice Wayne in delivering the opinion of the court thus noticed the general rule and the reason of its non-application in this case:

"If the language of the article had been 'beginning on the western bank of the Chattahoochee, and running thence up the river,' and no more had been said, the middle thread of the river ordinarily and without any reference to the fact that Georgia was the proprietor of the river, would have been said to be the dividing line between the two States. But there is added, 'running up the said River Chattahoochee and along the western bank thereof.' This last controls any uncertainty there may be, for if the first call or object to locate the line is the bank of the river, it is plain that the western limit of Georgia on and along the bank of the river must be where the bank and the water meet in its bed within the natural channel or passage of the river. The words 'along the bank,' added to the words 'on the bank' distinguish this case from all those in which courts have had the greatest difficulty where a line was to be fixed when it is on the bank without a call for the stream, or along the river, or up or down the river. Along the bank is strong and definite enough to exclude the idea that any part of the river, or its bed, was not to be within the State of Georgia."

As against this general rule and these authorities, defendant relies largely on the case of Handly's Lessee *v.* Anthony, 5 Wheaton 375. That case decided that—

"The boundary of the State of Kentucky does not include a peninsula, or island, on the western or northwestern bank of the Ohio, separated from the main land by a channel, or bayou, which is filled with water only when the river rises above its banks, and is, at other times, dry."

It seems to have been assumed that the northern bank of the Ohio river was the boundary of the State of Kentucky, and the question decided was where that northern bank was. And yet there is unquestionably something in the opinion of the court which helps to sustain defendant's contention. The territory north of the Ohio was ceded by Virginia to the General Government and the description was the territory "situate, lying and being to the

northwest of the River Ohio," and in respect thereto,
59 Chief Justice Marshall speaking for the court uses this language:

"When a great river is the boundary between two nations or States, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream. But when as in this case, one State is the original proprietor, and grants the territory on one side only, it retains the river within its own domain, and the newly created State extends to the river only. The river, however, is its boundary."

Counsel say: That was a cession from a State to the General Government; this a cession from the General Government to the State; that a cession of all "northwest of the river" this of all between a fixed line and the river; and from this similarity insist that that case is decisive of this. That there is similarity must be conceded, and yet there is the distinction suggested by me in the fore part of this opinion. One is only a cession, a grant while the other is also a governmental designation of a boundary. Further the language of the description is not identical. One is—and this in that which is only a grant—"territory northwest of the river" and the chief justice holds that that grants nothing of the river, that the description is exclusive. At best this is mere dictum, for the jurisdiction of Indiana was sustained over the tract in question. Here the cession was to land between the old State line and the river, and the extension of the boundary was to the river; thus making that natural water-course the boundary and the general rules construing such words of cession as subsequently affirmed by the Supreme Court in the cases cited *supra* carry that boundary to the center of the channel. Beyond this are these minor considerations. In the case of Missouri *vs.* Iowa, 7 How. 660, in which was decided a controversy between the two States as to their boundary not involving the question here, the Supreme Court used this language in reference to this cession to the State of Missouri.

"In February, 1831, the State of Missouri, by a memorial from the legislature to Congress, petitioned the United States for an addition of the country west of the line running from the mouth of the Kansas north, and between said line and the Missouri river alleging that it was a small slip of land that had been acquired, by the treaty of June 3, 1825, from the Kansas Indians. The petition declared, that the line from the mouth of the Kansas north was about one hundred miles long; that the country was settled, and rapidly settling, to its utmost verge; and that, as the Missouri river was the only great highway of this region, and could not be reached
60 through a country inhabited by Indians, and being without roads, a cession of it to that State was necessary and proper.

June 7, 1836, Congress acceded to the request of Missouri and granted to that State all jurisdiction over the lands lying between its then western line and the Missouri river, making the river the western boundary. But the accession was not to take effect until the Indian title to the country was extinguished."

Of course this is no more authoritative than the dictum of Chief

Justice Marshall, and yet it shows that the State of Missouri sought the only water-course as the highway of its western border and that Congress acceded to the request.

Again, in the act admitting the Territory of Nebraska into the Union, as a State, the description of its boundary seems to recognize the channel of the Missouri river as the northwest corner of the State of Missouri.

I need add nothing more to express the conclusions to which I have come. I think the center of the channel is the boundary line between the two States. The assessment of the bridge by the county of Doniphan was excessive, but the agreed statement of facts show the exact proportion that is west of the center of the channel. The decree will therefore be, that upon payment within sixty days by the complainant of that proportion of the entire tax, which *is* the length of that portion of the bridge in Kansas bears to the whole, an injunction will issue restraining the collection of the balance. Failing to make such payment the suit will be dismissed.

Indorsed: No. 6279. St. Joseph & Grand Island R. R. Co. *vs.* John Deveraux, sheriff of Doniphan Co. Kas. Opinion. Filed Dec. 30, 1889. Geo. F. Sharitt, clerk.

UNITED STATES OF AMERICA, } *ss*:
District of Kansas, }

At a term of the circuit court of the United States of America, for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday the 25th day of November, 1890, proceedings were had, and appear of record in words and figures as follows, to wit:

MONDAY, *December* 30, 1890.

ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY } 6279.
vs.
JOHN DEVEREUX, Sheriff of Doniphan County.

This cause, coming on to be heard was argued by counsel, and considered by the court.

61 Whereupon the court finds for the complainant that the boundary line between the State of Kansas and the State of Missouri, where the same is crossed by the railroad bridge of complainant is the center of the channel of the Missouri river.

It is therefore ordered, adjudged and decreed that upon payment within sixty days by complainant of the tax upon said bridge west of the center of said channel (being that portion of the entire tax which the length of that portion of the bridge in Kansas bears to the whole) an injunction will issue restraining the collection of the balance of said tax. Complainant failing to make such payment this suit will be dismissed.

Memorandum of Opinion.

In the Circuit Court of the United States for the District of Kansas.

SAINT JOSEPH AND GRAND ISLAND RAILROAD COMPANY
vs.
R. M. STEELE, Sheriff of Doniphan County, Kansas.

Complainant in this case seeks to enjoin the collection of a tax levied by the county authorities of the county of Doniphan upon a portion of a bridge extending across the Missouri river from St. Joseph on the Missouri bank to the Kansas bank of the river, the complainant contending that the authorities of Doniphan county have no right to assess that portion of the bridge within the State of Kansas and within Doniphan county as an independent structure for the reason that it is a part of its property held and used for the purpose of operating its railroad and can therefore be assessed only by the State board of railroad assessors consisting of the lieutenant governor, secretary of state, treasurer of State, auditor of State and the attorney general.

The bridge was built by the St. Joseph Bridge Building Company, a corporation organized for that purpose under the general corporation laws of the State of Missouri, under special authority granted by the act of Congress, approved March fifth, 1872, for the purpose of laying railway tracks thereon for the use of the railways then constructed or thereafter to be constructed, terminating at the river at or near St. Joseph and on the opposite side of the river at that point, also to provide ways for wagons, vehicles of all kinds and for the transit of animals and to provide ways for foot passengers and to keep up and maintain and operate the bridge for said purposes.

62 The railway companies operating their trains across the bridge to pay to the company constructing the bridge a reasonable compensation for its use and also authorizing the company constructing the bridge to charge and receive reasonable compensation or tolls, for the transit over the bridge of all wagons, carriages, vehicles, animals and foot passengers.

The agreed statement of facts shows that for a number of years after the bridge was constructed it was operated by the St. Joseph Bridge Building Company for the purposes specified in the act of Congress, said company charging the railroads operating their trains over and across the bridge and also all other persons using the bridge for the purpose of crossing with teams or otherwise a certain compensation or toll therefor. During the years the bridge was maintained and operated by the bridge company the county of Doniphan regularly, annually, assessed and taxed that part of the bridge which was within the State of Kansas, to wit, west of the center of the main channel of the Missouri river. While the bridge was thus operated by the bridge company it was used by the complainant, also by the Rock Island Railway Company and by the public gen-

erally for general travel, tolls being charged to all persons using the bridge for the privilege of crossing.

The bridge was not constructed as part of any railway company's line of road but as an independent structure and so operated for several years. June 25rd, 1885, the complainant purchased the bridge from the bridge company and has continued to maintain and operate it in exactly the same manner that it was operated by the bridge company charging and collecting tolls from other railroads and from all persons using the bridge including passengers upon its trains who are now, as they were during the time it was maintained and operated by the bridge company, charged an additional twenty-five cents over and above the regular railway fare, as a bridge charge, and collecting the same bridge charge from passengers on trains of other railway companies operating their trains across the bridge. Thus it will be seen that the bridge is maintained and operated by the complainant for the same purposes and in the same manner and is treated in all respects in the matter of collecting fares for its use as it was when maintained and operated by the bridge company prior to the purchase by the complainant in 1885, and it is still used, not for railway purposes alone, by the complainant, but by the trains of other railroad companies and also for general travel for which the complainant charges and collects tolls as the bridge company did; but it is urged by the complainant that it is the policy of the State of Kansas as indicated by its legislation that the entire property of a railroad company is to be
63 taxed as an entirety and should be assessed as a whole and that this bridge by reason of the purchase by complainant from the bridge company thereby became a part of the railroad and must be so assessed and taxed by the State board. I concede that it is the policy of the State of Kansas, as indicated by its legislation, to treat the property of a railroad company, for the purposes of assessment and taxation as an entirety, where the property is used exclusively for railway purposes. The wisdom of this legislation is at once apparent. The difficulty of assessing the value of railroad property in separate parcels, located in separate districts, is almost insuperable. The property of a railroad company used exclusively for railway purposes cannot be regarded as a farm or a town lot for the reason that its value must necessarily depend upon the whole line as a unit to be used for the purposes for which it was constructed. A separate mile of its road is almost valueless by itself. Its rolling stock has no particular locality except perhaps a constructive one in the place where the principal office of the company is located, for it is used upon all parts of the road and to avoid what would be manifestly unjust, viz.: giving the place where the principal office is located the benefit of taxing the whole of the rolling stock, the plan of assessing the property at a certain amount per mile for the whole road within the State apportioning it to the several counties and taxing districts through which the road passes, was adopted.

In this case, however, we have a bridge constructed not to be used distinctively as a railroad bridge, but also as a bridge for gen-

eral travel for the use of which all parties crossing the same are obliged to pay tolls or charges. Its character as taxable property, as an independent structure, had been established for years. It is now used by the complainant in the same manner that it was used by the bridge company; the same fees and charges are exacted of all persons and companies crossing it. It was not constructed by a railroad company as a part of its line, neither is it used exclusively for railway purposes and my own view is that under the laws of Kansas it cannot be assessed and taxed by the State board for the reason that its character, as an independent structure, cannot be changed by the mere conveyance from the bridge company to the railroad company.

Moreover, I think this exact question has already been settled by the circuit court of this district. In the case of this company *vs.* Devereux 41 Federal Reporter, page 14, this question was before Mr. Justice Brewer, then circuit judge. In discussing this
64 branch of the case, viz.: whether or not this bridge should be assessed as an independent structure, he said, "With respect to the latter question there can be little doubt. The bridge was not constructed as a part of the railroad. It is a costly structure used for purposes of general travel; and the fact that the railroad company has its rails upon and runs its cars across it does not destroy its original character as an independent structure. It is clearly subject to local taxation."

It is unnecessary to discuss other questions suggested at the argument. The injunction will be dissolved and the bill dismissed at complainant's cost.

JOHN A. RINER, *Judge.*

Indorsed: No. 6941. Memorandum of opinion. Filed Feb. 10, 1894. Geo. F. Sharitt, clerk.

Order.

In the Circuit Court of the United States for the District of Kansas.

SAINT JOSEPH & GRAND ISLAND RAILROAD COMPANY, Complainant,
vs.
R. M. STEELE, Sheriff of Doniphan County, Kansas, Defendant.

This cause came on to be heard at this term, and was argued by counsel, and thereupon upon consideration thereof, it is ordered, adjudged and decreed by the court that the injunction heretofore issued in this cause be dissolved and the bill filed herein be and the same is hereby dismissed at plaintiff's cost.

JOHN A. RINER, *Judge.*

Indorsed: No. 6941. Order. Filed Feb. 10, 1894. Geo. F. Sharitt, clerk.

Circuit Court of the United States for the District of Kansas.

THE ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, Appellant,
vs.
R. M. STEELE, Respondent.

The above-named plaintiff The St. Joseph & Grand Island Railroad Company, conceiving itself aggrieved by the order entered on Feb'y 10, 1894, in the above-entitled proceeding, doth hereby appeal from said order to the United States circuit — of appeals for the eighth circuit, and prays that this *his* appeal may be allowed
65 and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the said United States court of appeals.

M. A. REED,
Att'y for Pl'ff & Appellant, The St. Joseph & Grand I. R. R. Co.

Feb'y 10, 1894.

And now, to wit, on Feb'y 10, 1894, it is ordered that the appeal be allowed as prayed for.

And the amount of the bond on said appeal to be given by said complainant is hereby fixed at the sum of ten thousand dollars.

JOHN A. RINER, *Judge.*

Indorsed: No. 6941. Prayer & allowance of appeal. Filed Feb. 10, 1894. Geo. F. Sharitt, clerk.

Assignment of Errors.

In the Circuit Court of the United States within and for the District of Kansas.

THE ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, Plaintiff in Error,
vs.
R. M. STEELE, Defendant in Error.

Now comes the said plaintiff, The St. Joseph & Grand Island Railroad Company, and alleges and shows to the court that in the record and proceedings had in the above-entitled cause there is manifest error to the prejudice of said plaintiff in this, to wit:

1st. That the said circuit court erred in not sustaining the bill of plaintiff as therein asked for, and in not making the temporary injunction granted herein perpetual.

2nd. That the said court erred in holding that the tax levied by Doniphan county, upon that part of plaintiff's bridge in Doniphan county, Kansas, as set out in said bill, was a legal tax, and one which said Doniphan county had the right, under the laws of Kansas, to levy, and one which could be forced against that part of said bridge so situated as in said bill set forth.

3d. That the said court erred in holding that the State board of

railroad assessors of the State of Kansas had no right, power, or authority, under the laws of Kansas, to assume the jurisdiction it did as shown in plaintiff's bill herein over that part of said
66 bridge in said Doniphan county and to value and assess the same as an indivisible and indistinguishable part of plaintiff's said railroad property in the State of Kansas.

4th. That the said court erred in holding that plaintiff's said railroad bridge as the same is described in plaintiff's bill and shown in the agreed statement of facts herein, was, when the tax in question was levied and is, an independent structure and as such distinguishable for the purposes of taxation, from the rest and residue of plaintiff's said railroad property assessible by the State board of railway assessors of the State of Kansas.

5th. That the said court erred in holding that the relief asked for by plaintiff in its said bill, was and is barred by the former case in this court, and entitled St. Joseph & Grand Island Railroad Company *vs.* John Deveraux as the same is reported in the 41 Fed. R. 14.

6th. That the said court erred in holding that plaintiff, under the pleadings and the agreed statement of facts, was not entitled to the relief prayed for in its said bill, and in dismissing the same, and in dissolving the temporary injunction heretofore granted herein.

Wherefore the said The St. Joseph & Grand Island Railroad Company, plaintiff in error, prays that the decree aforesaid may be reversed, annulled and altogether held for naught and that the above-entitled cause may be remanded to said circuit court for further proceedings therein according to law and that it may be restored to all things it has lost by reason of said decree.

JOHN M. THURSTON &
M. A. REED,
Att'ys for Plaintiff in Error.

Indorsed: No. 6941. St. Joseph & Grand Island Railroad Co. *vs.* R. M. Steele. Assignment of errors. Filed Feb. 13, 1894. Geo. F. Sharitt, clerk.

Circuit Court of the United States of America for the District of Kansas.

ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, Appellant,
vs.
R. M. STEELE, Respondent.

Know all men by these presents, that we, The St. Joseph and Grand Island Railroad Company as principal, and John R. Mulvane of Topeka, Kansas, as surety, are held and firmly bound unto the above-named R. M. Steele or his successor in office as sheriff of Doniphan county, Kansas, in the sum of ten thousand dollars to be paid to the said Steele or to his successor in office, for the payment

of which, well and truly to be made, we bind ourselves and
67 each of us, and our heirs, executors and administrators, or successors and assigns, jointly and firmly, by these presents. Sealed with our seals and dated the 13th day of February, 1894.

Whereas, the above-named, The St. Joseph and Grand Island Railroad Company has prosecuted an appeal to the United States circuit court of appeals for the eighth circuit to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the district of Kansas.

Now therefore, the condition of this obligation is such that if the above-named, The St. Joseph and Grand Island Railroad Company, shall prosecute said appeal to effect, and answer all damages and costs if it fail to make said appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and effect.

THE ST. JOSEPH & GRAND ISLAND
RAILROAD COMPANY, [L. S.]
By M. A. REED, *Its General Attorney.*
J. R. MULVANE. [L. S.]

Approved this 13th day of February, A. D. 1894.

JOHN A. RINER, *Judge.*

Indorsed: No. 6941. St. Joseph & Grand Island Railroad Co. *vs.* R. M. Steele. Bond. Filed Feb. 13, 1894. Geo. F. Sharitt, clerk.

UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

I, Geo. F. Sharitt, clerk of the circuit court of the United States of America, for the district of Kansas, do hereby certify the foregoing to be a true, full and correct copy of the record and proceedings in said court in the case of Saint Joseph & Grand Island Railroad Company *vs.* R. M. Steele, sheriff of Doniphan county, Kansas, No. 6941. I further certify that the original citation and waiver of service are returned herewith and made a part of this transcript.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Topeka, in said district of Kansas, this 20th day of February, A. D. 1894.

GEO. F. SHARITT, *Clerk.*

Filed Mar. 16, 1894.

JOHN D. JORDAN, *Clerk.*

68 *Appearance of Counsel for Appellant.*

And on the twenty-sixth day of March, A. D. 1894, an appearance of counsel for appellant was filed in the clerk's office of said circuit court of appeals in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, Appellant, *vs.* R. M. STEELE, Sheriff, etc. } No. 428.

The clerk will enter my appearance as counsel for the appellant.

JOHN M. THURSTON.
M. A. REED.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1894. No. 428. St. Joseph & Grand Island Railroad Co., appellant, *vs.* R. M. Steele, sheriff. Appearance. Filed Mar. 26, 1894. John D. Jordan, clerk. John M. Thurston, Omaha; M. A. Reed, St. Joseph, Mo., counsel for appellant.

Appearance of Counsel for Appellee.

And on the nineteenth day of April, 1894, an appearance of counsel for appellee was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, Appellant, *vs.* R. M. STEELE, Sheriff, etc. } No. 428.

The clerk will enter my appearance as counsel for the appellee.

P. L. SOPER,
J. H. GILPATRICK,
Of Counsel.

69 Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1894. No. 428. St. Joseph & Grand Island R. R. Co., appellant, *vs.* R. M. Steele, sheriff, etc. Appearance. Filed Apr. 19, 1894. John D. Jordan, clerk. P. L. Soper, Muskogee; J. H. Gilpatrick, Leavenworth, counsel for appellee.

Argument Commenced.

And on the sixth day of June, A. D. 1894, in the record of the proceedings of said circuit court of appeals is an entry in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

WEDNESDAY, *June* 6, 1894.

THE ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, Appellant, *vs.* R. M. STEELE, Sheriff, etc., Appellee. } No. 428.

Appeal from the circuit court of the United States for the district of Kansas.

This cause having been called for hearing in its regular order, argument was commenced by Mr. M. A. Reed on behalf of appellant, and further hearing postponed until tomorrow morning.

Order of Submission.

And on the seventh day of June, A. D. 1894, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

THURSDAY, *June* 7, 1894.

THE ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, Appellant, *vs.* R. M. STEELE, Sheriff, etc., Appellee. } No. 428.

70 Appeal from the circuit court of the United States for the district of Kansas.

This cause having been called for further hearing, argument was continued by Mr. M. A. Reed, on behalf of the appellant, and continued by Mr. J. H. Gilpatrick, on behalf of appellee, and concluded by Mr. M. A. Reed, in behalf of the appellant.

Thereupon this cause was submitted on the transcript of record from said circuit court and the briefs of counsel filed herein to Judges Brewer, Sanborn, and Thayer.

Opinion.

And on the eighth day of October, A. D. 1894, an opinion of said circuit court of appeals was filed in said cause in the following words, to wit:

71 United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1894.

THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, Appellant,
vs.
R. M. STEELE, Sheriff of Doniphan County, Kansas, Appellee.

No. 428. Appeal from the Circuit Court of the United States for the District of Kansas.

Before Brewer, circuit justice, and Sanborn and Thayer, circuit judges.

Statement.

This was a bill which was filed by the appellant, The St. Joseph and Grand Island Railroad Company against R. M. Steele in his official capacity as sheriff of Doniphan county, Kansas, to restrain him from selling a portion of a bridge across the Missouri river under a warrant that had been issued by the treasurer of Doniphan county, Kansas, to enforce the collection of certain taxes theretofore assessed against the bridge by the local authorities of Doniphan county. The eastern terminus of the bridge is in the city of St. Joseph, Missouri; the western terminus and the western nine hundred and twenty-six feet of the structure are situated in Washington township, Doniphan county, Kansas; the residue or eastern portion of the structure lies within the boundaries of the State of Missouri. In May, 1892, the local authorities of Doniphan county, Kansas, assessed that portion of the bridge which is situated in Kansas, for taxation for that year, at a valuation of two hundred thousand dollars, upon the theory that it was a toll-bridge and that as such
72 it was subject to valuation and assessment by the local township assessor. A tax of eight thousand one hundred dollars on such valuation was subsequently imposed and duly extended on the tax books of the county. This tax not having been paid, a warrant was issued for its collection, and the appellee, R. M. Steele, as sheriff of the county of Doniphan was proceeding to enforce the collection of the tax by a sale of that portion of the bridge lying within the State of Kansas, when the present suit was instituted by the appellant, to restrain the sale and to prevent the collection of the aforesaid tax.

The laws of Kansas do not authorize local township or city assessors to assess railroad property within their jurisdiction for the purpose of taxation; they require all railroad property to be valued as an entirety, by a board of railroad assessors, and the amount of the aggregate valuation to be apportioned for taxation among the various townships through which the road runs. In this behalf the statutes of that State provide, in substance, as follows: That the lieutenant governor, secretary of state, State treasurer, State auditor and attorney general shall constitute a board for the valuation and assessment of all railroad property in that State. It is

made the duty of said board to ascertain all the railroad property owned and operated within the State, by every railroad company, and to appraise and assess such property as an entirety at its actual value in money. To aid the board in thus ascertaining and assessing railroad property, each railroad company owning or operating a road within the State, is required to make a return of all its property, to the State auditor, on or before March 20th in each year. The laws of Kansas further provide that when the board of railroad assessors have valued and assessed the property of a railroad, it shall cause the State auditor to make a return to the county clerk of every county in the State in which any part of the road is located, which return shall show, among other things, the number of miles of track located in each township of the county, the average valuation per mile, and the amount of the aggregate valuation for the purpose of taxation that shall be placed to the credit of each city and township in the county through which the road runs. General Statutes of Kansas, 1889, secs. 6871, 6872, 6873, 6875, 6879, 6880, 6881, and 6884.

With reference to the allegations of the bill of complaint which was filed by the appellant, it is sufficient to say, that it averred, in substance, that the aforesaid bridge had been owned by the appellant company since June, 1885, and that in the meantime it had formed an integral part of its railroad which extended from St. Joseph, Missouri, to the city of Grand Island, Nebraska; that during said period it had been used continuously for the passage of its trains over the Missouri river; that in the month of May, 1892, the appellant had duly made a return to the State auditor, as required by law, of all its property located in Kansas, including that part of said bridge which was situated within the State; that the State board of railroad assessors had subsequently valued all of its property so returned for the purpose of taxation, and that the board had likewise certified to the county clerk of Doniphan
73 county, as required by law, the amount of the aggregate valuation that had been apportioned to Doniphan county for the purpose of taxation therein. The bill further averred that the board of county commissioners of Doniphan county had subsequently caused taxes for the year 1892 to be levied and extended upon the valuation of the appellant's property within Doniphan county that had been fixed and certified by the State board of railroad assessors, and that the tax so levied and extended had been duly paid to the proper officers of the county on December 19, 1892.

In view of the premises the bill charged that the taxes levied upon said bridge as a toll-bridge under the assessment made in May, 1892, by the local township assessor, was an illegal tax, and that the warrant under which the appellant was proceeding to sell said bridge was utterly void and of no effect.

In his answer to the bill of complaint, the appellee pleaded, in substance, that the said bridge referred to in the bill was an independent structure, to wit, a toll-bridge; that it was not constructed as a part of any railroad and had never been used exclusively as a

railroad bridge; that being a toll-bridge the power to assess the same for the purpose of taxation, or to assess so much thereof as was located in Kansas, was vested exclusively in the local township assessor, and that it had been erroneously returned as railroad property to the State auditor and had been unlawfully assessed by the State board of railroad assessors. The defendant also pleaded specially that the right of the local township assessor to assess the bridge as a toll-bridge, had been previously litigated, in a suit brought by the appellant against John Devereux, a former sheriff of Doniphan county, Kansas, in which suit it had been finally adjudged and determined that the right to assess said bridge for the purpose of taxation was vested by the laws of Kansas in the local township assessor and not in the board of railroad assessors.

The circuit court on final hearing dismissed the bill of complaint; whereupon the complainant appealed.

Mr. M. A. Reed (Mr. John M. Thurston was with him on the brief) for the appellant.

Mr. J. H. Gillpatrick (Mr. P. L. Soper was with him on the brief) for the appellee.

THAYER, J., after stating the case as above, delivered the opinion of the court:

The first question that merits our attention on this appeal is, whether the relief sought by the appellant is barred by the decree dismissing the appellant's bill of complaint in the suit formerly brought by this appellant against John Devereux, the then
74 sheriff of Doniphan county, Kansas, in the circuit court of the United States, for the district of Kansas? In the present action, as will be seen by the foregoing statement, the appellant bases its right to relief, on the sole ground, that the local authorities of Doniphan county had no right to assess any portion of its bridge which spans the Missouri river at St. Joseph, Missouri, for the reason that an exclusive power to assess said bridge for the purposes of taxation had been vested by the laws of Kansas in the State board of railroad assessors, inasmuch as the bridge formed an integral part of the appellant's railroad and was not a toll-bridge. It will be important, therefore, to inquire at the outset as to the nature of the former suit against John Devereux and as to the precise issues that were tried and determined in that proceeding. The record discloses that that suit was begun in the month of February, 1889, and that it involved the validity of a tax for the year 1888 which had been assessed against the aforesaid bridge, on the theory that it was a toll-bridge, by the township assessor of Washington township, Doniphan county, Kansas. That suit, like the one at bar, was a bill for an injunction to restrain the collection of the aforesaid tax on the ground that it had been illegally imposed by the local authorities of the township and county. The bill in the former case, as in the case at bar, alleged in substance that the St. Joseph & Grand Island Railroad Company was the absolute owner of the bridge now in controversy; that it formed a part of its railroad property; that the complainant company had duly made a return of all its railroad

property, including that portion of said bridge which was located in Kansas, to the State auditor; that the State board of railroad assessors had duly valued and assessed the property so returned, for taxation for the year 1888; that the board had thereupon caused the State auditor to make a due return of said assessment to the county clerk of Doniphan county; and that the board of county commissioners of that county had subsequently extended a tax for the year 1888, basing the same on the assessment so made and furnished by the board of railroad assessors; and that such tax had been duly paid by the complainant company prior to filing its bill to restrain the collection of the tax which had been assessed by the local authorities. The bill in the case against Devereux also contained the following specific allegation and prayers for relief, to wit:

"Your orator further alleges that neither the county, nor township authorities, or assessors of said Doniphan county, have or had any authority or jurisdiction to levy, assess, extend or charge up any taxes whatever against any part of the said railroad bridge of your orator in said Doniphan county. That the State board of railroad assessors of said State of Kansas had exclusive jurisdiction for assessing the said property to your orator in said Doniphan county for the year 1888.

"Wherefore your orator prays * * * that on a final hearing of this case * * * your honors will find and decree * * * that the said bridge of your orator over the said
75 Missouri river is a part of its railroad and is and was assessable in the State of Kansas for the year 1888 by the said board of railroad assessors of said State only. That the said assessment of the said bridge of your orator made by the said Thomas B. Hickman (the township assessor) for the year 1888, the taxes levied and extended on such assessment, are illegal and void and not chargeable to your orator or its property."

The defendant's answer to the former bill of complaint likewise contained the following allegations:

"Further answering the defendant avers * * * that said bridge is and from the completion thereof has been used for the purpose of crossing persons and property, for which tolls have been demanded and received by the corporations, the predecessors of complainant and the prior owners thereof, and is now and constantly has been since the construction thereof the common thoroughfare for teams, carriages and the ordinary vehicles used in travel and the transportation of men and merchandise in transit between the States of Kansas and Missouri at the points aforesaid, and by the plaintiff and complainant for its coaches, cars and engines, as well as by other railroad companies, the latter, and all railroad corporations, paying to complainant full compensation for such use and carriage. * * * And the said defendant alleges that the said board of railroad assessors of the State of Kansas did not, as averred, assess the said bridge and have no power so to do, and that that would be beyond the scope of their functions and duties as such assessors."

Moreover, the opinion of the circuit court, on the rendition of its final decree in the former case, contains the following statement of the questions involved in that action which it was called upon to decide. The court said:

"Two questions are presented. First. Is it (the bridge) wholly within the county of Doniphan; and that depends upon where the boundary line between the State- of Kansas and Missouri is; whether in the center of the main channel, or on the east bank of the river. Second. Did the return of this as a part of the railroad track exempt it from subjection to taxation as an independent structure in Doniphan county? With respect to the latter question there can be little doubt. The bridge was not constructed as a part of the railroad. It is a costly structure used for general purposes of travel; and the fact that the railroad company has its rails upon and runs its cars across it does not destroy its original character as an independent structure. It is clearly subject to local taxation."

From what has been said with reference to the nature of the former suit and the allegations contained in the pleadings therein, it is obvious, we think, that one of the issues that was tried and determined in that action was whether the bridge which figures in the present controversy was an independent structure, to wit, a toll-bridge, and as such was subject to valuation and assessment by the local township
76 assessor, or whether it was an integral part of the St. Joseph & Grand Island railroad and as such was exclusively subject to assessment by the State board of railroad assessors. It is hardly necessary to remark, in view of what we have already said concerning the character of the present action, that this is the identical issue with which we are confronted in the case at bar. No attempt is made in the present bill of complaint to state any ground for equitable relief, against the assessment of 1892, other than the fact that the aforesaid bridge was not a toll-bridge when said tax was imposed and that it was not then subject to valuation and assessment by the local assessor. It is true that in the former suit against Devereux a question as to the boundary line between the States of Missouri and Kansas was tried and determined. The validity of the tax assessment by the local authorities for the year 1888, was challenged in the former suit, because the local authorities had valued the entire bridge on the assumption that it was wholly within the State of Kansas; but it is equally true that the other and more fundamental question was involved, and was duly tried and determined, as to whether the bridge was or was not an integral part of the appellant's railroad, and as to whether any part of it was subject to assessment by the local authorities of Doniphan county. We do not understand that any of the propositions heretofore advanced are seriously controverted. It seems to be conceded by counsel for the appellant that at least one of the issues involved in the suit against Devereux, is the same issue that is presented by the case at bar. It is also conceded, or if not conceded it is manifest, that the parties to the two suits were and are the same, for in each instance the defendant was sued not as an individual but in his representative character as sheriff of Doniphan county.

In view of these concessions and the facts disclosed by the record in the former suit, counsel for the appellant has realized the obvious necessity of avoiding the effect of the final decree of the circuit court of the United States in the suit against Devereux. An attempt is made to avoid the operation of that decree, upon the ground, that the facts on which the circuit court predicated its ruling in the former suit, that the bridge was subject to assessment by the local township assessor, are materially different from the facts disclosed in the case at bar. In support of this contention, it is said, in substance, that in the former case it was not disclosed by the return made by the appellant to the State auditor, in the year 1888, that a portion of the property then returned consisted of a bridge; whereas the return made by the appellant in 1892 did show that nine hundred and twenty-six feet of the mileage therein returned for taxation, consisted of a bridge structure, on which the appellant's track was laid. It is urged that this latter circumstance destroys the conclusive effect of the former decree and enables the appellant to relitigate a question which has once been tried and determined in a suit between the same parties. We think it clear that the circumstance last stated is quite immaterial, and that it does not impair the effect of the former decree for the fol-
77 lowing reasons: The ultimate point to be decided in the former case was whether the bridge was subject to assessment by the local township assessor, and the decision of that question turned upon the further inquiry whether it was in fact a toll-bridge within the meaning of the Kansas statute which permitted toll-bridges to be assessed by the local assessors. It is manifest that the finding upon the latter issue depended upon the circumstances under which the bridge had been built and the manner in which it had thereafter been used, and the evidence as to those points was quite as full and specific on the former trial as at the last hearing. In other words, the fact that the appellant did not distinctly specify in its report to the State auditor that a portion of the mileage by it returned, consisted of a bridge, had no bearing so far as we can see upon any question either of law or of fact which the circuit court had to determine in the former suit. It results from this view of the case that its failure to specify the fact aforesaid, in its return to the State auditor, does not alter the conclusive effect of the former decree.

In conclusion it is only necessary to add that in our judgment the decree in the suit against Devereux operates as an estoppel and precludes the appellant in this action from contending to the contrary of what was therein found and determined, namely: that the bridge now in question is a toll-bridge and as such is subject to assessment by the local authorities of Doniphan county. This conclusion, we think, is the necessary result of a long line of Federal adjudications, to wit: Cromwell *v.* County of Sac, 94 U. S. 351; Campbell *v.* Rankin, 99 U. S. 261, 263; Wilson's Executor *v.* Dean, 121 U. S. 525; Nesbitt *v.* Riverside Independent District, 144 U. S. 610; Southern Minnesota Railway Extension Company *v.* St. Paul

& Sioux City Railroad Company, 5 C. C. A. 249, and cases there cited.

The decree of the circuit court being for the right party, on the ground and for the reasons last stated, we have not deemed it necessary or profitable to consider any other questions that have been discussed by counsel.

The decree of the circuit court is hereby affirmed.

Filed October 8, 1894.

78 *Decree.*

And on the eighth day of October, A. D. 1894, in the record of the proceedings of the said circuit court of appeals is a decree in said cause in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, Appellant,
vs.
R. M. STEELE, Sheriff of Doniphan County, Kansas, Appellee. } No. 428.

Appeal from the circuit court of the United States for the district of Kansas.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Kansas and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs, and that R. M. Steele, sheriff of Doniphan county, Kansas, recover against the St. Joseph and Grand Island Railroad Company the sum of twenty dollars for his costs herein and have execution therefor.

October 8, 1894.

Petition for Appeal.

And on the fourth day of March, A. D. 1895, there was filed in the clerk's office of the said circuit court of appeals in said cause a petition for appeal in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, Appellant,
vs.
R. M. STEELE, Sheriff of Doniphan County, Kansas, Respondent.

The above-named plaintiff, The St. Joseph & Grand Island Railroad Company, conceiving itself aggrieved by the decree of the

United States circuit court of appeals for the eighth circuit rendered herein on the eighth day of October, 1894, prays an appeal from the decree of said court to the Supreme Court of the United States, and respectfully requests that the clerk of this court be directed to
79 forward to said Supreme Court a complete transcript, duly authenticated, of the record and proceedings in the above-entitled cause.

Said appeal is prayed for manifest error in the record and proceedings herein, to wit:

1st. That the court erred in holding that the decree in the case of St. Joseph & Grand Island Railroad Company *vs.* Devereux was conclusive of the rights of the plaintiff and appellant in this case and a bar to any and all relief claimed herein.

2nd. The court erred in not considering this case upon its merits, and in not granting to said plaintiff and appellant the relief prayed for in its petition.

JOHN M. THURSTON AND
M. A. REED,
Att'ys for Plaintiff and Appellant.

Appeal allowed March 4, 1895.

HENRY C. CALDWELL,
U. S. Circuit Judge.

Endorsed: St. Joseph & Grand Island R. R. Co., appellant, *vs.* R. M. Steele, sheriff Doniphan Co., Kans., respondent. Petition for appeal. Filed Mar. 4, 1895. John D. Jordan, clerk.

Assignment of Errors.

And on the fourth day of March, 1895, there was filed in the clerk's office of the said circuit court of appeals in said cause an assignment of errors in words and figures following, to wit:

In the United States Circuit Court of Appeals for the 8th District.

THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, Plaintiff in Error,
vs.
R. M. STEELE, Sheriff of Doniphan County, Kansas, Defendant in Error.

Now comes the said plaintiff in error, The St. Joseph and Grand Island Railroad Company, and alleges and shows to the court that in the record and proceedings had in the above-entitled cause there is manifest error and prejudice to the said plaintiff in this, to wit:

80 First. That the circuit court trying this case erred in not sustaining the bill of plaintiff, as therein asked for, and in not making the temporary injunction granted herein perpetual.

Second. That the said court erred in holding that the tax levied by Doniphan county upon that part of plaintiff's bridge in Doniphan county, Kansas, as set out in said bill, was a legal tax and one which said Doniphan county had the right under the laws of Kansas to levy and one which could be enforced against that part of the bridge so situated as in said bill set forth.

Third. That the said court erred in holding that the State board of railroad assessors of the State of Kansas had no right, power, or authority under the laws of Kansas to assume the jurisdiction it did, as shown in plaintiff's bill herein, over that part of said bridge in said Doniphan county and to value and assess the same as an indivisible and indistinguishable part of plaintiff's said railroad property in the State of Kansas.

Fourth. That the said court erred in holding that plaintiff's said railroad, as the same is described in plaintiff's bill, as shown in the agreed statement of facts herein, was when the tax in question was levied and is an independent structure, and as such distinguishable for the purposes of taxation from the rest and residue of plaintiff's said railroad property assessable by the State board of assessors of the State of Kansas.

Fifth. That said court erred in holding that the relief asked for by plaintiff in its said bill was and is barred by a former case, entitled "St. Joseph and Grand Island Railroad Company *vs.* John Deveraux," as the same is reported in the 41st Fed. R., 14.

Sixth. That the said court erred in holding that plaintiff, under the pleadings and agreed statement of facts, was not entitled to the relief prayed for in said bill and in dismissing the same and
81 in dissolving the temporary injunction heretofore granted herein, and because this court has erred in holding that the said case of The St. Joseph and Grand Island Railroad Company *vs.* Deveraux, so as aforesaid reported in the 41st Fed. R., page 14, is a bar to the prosecution of this present suit; and because this court did not consider the case upon its merits and did not give and grant unto the above-named plaintiff in error the relief prayed for in its bill herein; and because the United States statutes which are set out in said bill clearly and plainly show a purpose to constitute the said bridge primarily and principally a railroad bridge, and that the addition of a highway feature thereto was intended to be by the said act a mere incident to the said bridge; and because the subsequent act of Congress in said petition set out, while ratifying and approving of the assignment of the said bridge franchises, nevertheless took particular care that the main purpose of the said bridge should not be interfered with or perverted from its original design and purposes as a railroad bridge; and because the decree of this court should have been in favor of the above-named plaintiff in error, granting the relief prayed for in its said bill and making the temporary injunction herein granted perpetual.

JOHN M. THURSTON AND
M. A. REED,
Attorneys for Pl'ff in Error.

Endorsed: St. Joseph & Grand Island R. R. Co., appellant, *vs.* R. M. Steele, sheriff, etc., resp. Assignment of errors. Filed March 4, 1895. Henry C. Caldwell, U. S. circuit judge. Filed Mar. 4, 1895. John D. Jordan, clerk.

Order Allowing Appeal.

And on the fourth day of March, A. D. 1895, in the record of the proceedings of said circuit court of appeals is an order allowing appeal in said cause in words and figures following, to wit:

82 United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, Appellant,
vs.
R. M. STEELE, Sheriff of Doniphan County, Kansas, Appellee. } No. 428.

Appeal from the circuit court of the United States for the district of Kansas.

This day, on consideration of the petition of the St. Joseph and Grand Island Railroad Company, it is ordered that an appeal be allowed to the Supreme Court of the United States from the decree of this court entered on the eighth day of October, A. D. 1894, and that the cost bond filed in said cause be approved and a citation issued directed to said R. M. Steele, sheriff, etc., commanding him to be and appear in the Supreme Court of the United States to answer said appeal.

March 4, 1895.

HENRY C. CALDWELL,
Judge of the United States Circuit Court of Appeals, Eighth Circuit.

Endorsed: No. 428. St. Joseph & Grand Island Railroad Company, appellant, *vs.* R. M. Steele, sheriff, etc. Order allowing appeal to Supreme Court U. S. Filed Mar. 4, 1895. John D. Jordan, clerk.

Bond on Appeal.

And on the fourth day of March, A. D. 1895, was filed in the clerk's office of the said circuit court of appeals a bond on appeal in said cause in words and figures following, to wit:

In the United States Circuit Court of Appeals for the Eighth District.

THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, Appellant,
vs.
R. M. STEELE, Sheriff of Doniphan County, Kansas, Respondent.

83 The St. Joseph and Grand Island Railroad Company, as principal, and S. C. Woodson and J. W. McAlister, of St. Joseph, Missouri, as sureties, hereby acknowledge themselves indebted to the above-named respondent in the sum of five hundred dollars ($500.00); for the payment of which, well and truly to be made, we bind ourselves, our successors, our executors, and administrators, firmly by these presents.

The condition of the above obligation is such, however, that if the above-named St. Joseph & Grand Island Railroad Company or its sureties herein named shall well and faithfully pay all costs incurred in the appeal herein to the Supreme Court of the United States, to which court the said appellant is about to take this cause by appeal, and when said costs shall be due and payable and as the same shall be demanded, then this obligation is to be void; otherwise to remain in full force and effect.

Witness our hands and seals this 1st day of March, 1895.

ST. JOSEPH & GRAND ISLAND R. R.,
By W. P. ROBINSON, JR.,
General Manager for Receivers.
S. C. WOODSON.
J. W. McALISTER.

Approved for and as a cost bond only this fourth day of March, 1895.

HENRY C. CALDWELL,
Judge U. S. Circuit Court of Appeals for the Eighth Circuit.

Endorsed: St. Joseph & Grand Island Railroad Company, app., *vs.* R. M. Steele, sh'ff Doniphan Co., Kans., resp. Bond for costs. Filed Mar. 4, 1895. John D. Jordan, clerk.

Citation.

And on the eleventh day of March, A. D. 1895, a citation was filed in the clerk's office of said circuit court of appeals in said cause, the original of which is hereto attached and herewith returned.

84 The United States of America to R. M. Steele, sheriff of Doniphan county, Kansas, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein

The St. Joseph and Grand Island Railway Company is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Henry C. Caldwell, judge of the United States circuit court of appeals for the eighth circuit, this fourth day of March, in the year of our Lord one thousand eight hundred and ninety-five.

HENRY C. CALDWELL,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

Service of within citation made and hereby acknowledged this 7th day of March, A. D. 1895. J. H. GILLPATRICK,
Of Counsel for Appellee.

[Endorsed:] No. —. Supreme Court of the United States. St. Joseph and Grand Island Railroad Co., appellant, *vs.* R. M. Steele, sheriff, &c. Citation on appeal. Filed Mar. 11, 1895. John D. Jordan, clerk.

85 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, eighth circuit, do hereby certify that the foregoing eighty-four pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in the case of St. Joseph and Grand Island Railroad Company, appellant, *vs.* R. M. Steele, sheriff of Doniphan county, Kansas, appellee, No. 428, May term, 1894, as the same remain upon the files and records of said United States circuit court of appeals.

I also certify that on the eighth day of December, A. D. 1894, there was issued out of the clerk's office of said circuit court of appeals a mandate in said cause directed to the circuit court of the United States for the district of Kansas.

I further certify that the original citation, with acknowledgment of service endorsed thereon, is hereto attached and herewith returned.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this sixteenth day of March, A. D. 1895.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Endorsed on cover: Case No. 15,861. U. S. circuit court of appeals, eighth circuit. Term No., 256. The St. Joseph & Grand Island Railroad Company, appellant, *vs.* R. M. Steele, sheriff of Doniphan county, Kansas. Filed April 6, 1895.

167-659

Office Supreme Court, U. S.
FILED.
MAR 5 1897
JAMES H. MCKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

October Term, 1896.

No. 256.

The St. Joseph and Grand Island Railroad Company,
Appellant,

vs.

R. M. Steele, Sheriff of Doniphan County, Kansas.

BRIEF FOR APPELLANT.

JOHN M. THURSTON,
JOHN F. DILLON,
Solicitors for Appellant.

McGILL & WALLACE, LAW PRINTERS, Washington, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1876.

THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, Appellant,

vs.

R. M. STEELE, Sheriff of Doniphan County, Kansas.

No. 256.

Statement of the Case.

On the 23d of July, 1866, Congress passed an act granting to the St. Joseph and Denver City Railroad Company every alternate section of land that might lie on either side of the railroad, which that company was incorporated to build from Elwood, Kansas, opposite St. Joseph, in Missouri, westward to a junction with the Union Pacific Railroad.

14 U. S. Statutes at Large, 210.

For the purpose of further assisting the said railroad company, Congress passed an act, approved July 14, 1870, as follows:

"*And be it further enacted*, That it shall be lawful for the St. Joseph and Denver City Railroad Company, a corporation chartered and authorized by the laws of the State of Kansas, or their assigns, to build a bridge and maintain the same across the Missouri River at or near St. Joseph, Missouri, on the terms and subject to the limitations and restrictions contained in the first, second,

and third sections of the act of Congress, passed July 28, 1866, entitled, 'An act to authorize the construction of certain bridges and to establish post roads,' and that said corporation may have, hold, and enjoy all the rights, privileges, and franchises conferred by and contained in said last mentioned act. And said company may construct and maintain ways for wagons, carriages, and for foot passengers, charging and receiving reasonable tolls therefor, and when said bridge is constructed under said limitations, it shall be a lawful structure and be recognized and known as a post route: *Provided*, That if said bridge shall be constructed as a drawbridge, the spans of the draw shall not be less than two hundred feet in the clear on each side of the central point."

16 U. S. Stats. at Large, 275.

The St. Joseph and Denver City Railroad Company, not possessing the means to build this bridge, and still being unwilling to lose its hold upon its privileges and franchises so granted to them, on the 8th day of April, 1871, entered into an agreement in writing with the St. Joseph Bridge Building Company, a corporation formed under the laws of Missouri for the express purpose of building this bridge, whereby, for special consideration moving directly to the railroad company, it granted and transferred to said Bridge Building Company all the rights, privileges and franchises which it had received under the act of July 14, 1870. And the said Bridge Building Company covenanted and agreed to "construct a railroad bridge across the Missouri River at the city of St. Joseph, Buchanan County, Missouri, and complete the same within two years from the first day of January, 1872, so that railroad locomotives and trains of cars can pass over the same with convenience and safety, and the eastern end of said bridge shall be within the present corporate limits of said city of St. Joseph."

As further showing that this contract was not an absolute sale of the said bridge franchises, disconnected

from all special advantages of said bridge to said St. Joseph and Denver City Railroad Company, it was lastly provided in said contract that the transfer of the franchises was "upon the express condition that if said bridge shall not be completed as aforesaid, within the time herein specified, all the rights and privileges hereinbefore conferred upon and transferred to said party of the second part shall cease and determine, and the assignment hereinbefore made shall become null and void, and the franchise hereinbefore transferred or assigned shall vest in said party of the first part or its assigns in as full and complete a manner and to the same extent as though this contract had never been made."

For this contract in full, see printed record, pp. 22 and 23.

After having thus acquired the bridge franchises from the St. Joseph and Denver City Railroad Company, the St. Joseph Bridge Building Company, knowing that its incorporation under the laws of Missouri would not be sufficient to authorize it to bridge a navigable stream like the Missouri River, and as supplementary to and confirmatory of the assignment so held from said railroad company, applied to Congress for an express grant to build said bridge. Accordingly, on March 5, 1872, Congress passed an act, the first section of which was as follows:

"*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled*, That it shall be lawful for the St. Joseph Bridge Building Company, a corporation organized for that purpose under the general corporation laws of the State of Missouri, to construct a bridge across the Missouri River at or near St. Joseph, Missouri, and to lay on or over said bridge railway tracks for the more perfect connection of any and all railways that are now or which may hereafter be constructed to the Missouri River at or near St. Joseph, or to the river

on the opposite side of the same, near St. Joseph; and build, erect, and lay on and over said bridge, ways for wagons, vehicles of all kinds and for transit of animals, and to provide ways for foot passengers, and to keep up, maintain and operate said bridge for the purposes aforesaid, and when said bridge is constructed, all trains of all railroads terminating at said river and on the opposite side thereof, at or near St. Joseph, Missouri, shall be allowed to cross said bridge for reasonable compensation to be made to the owners of the same, under the limitations and conditions hereinafter named. The owners of said bridge may also charge and receive reasonable compensation or tolls for the transit over said bridge of all wagons, carriages, vehicles, animals and foot passengers."

So careful, however, was Congress that these bridge franchises should still inure as a railroad facility for the special benefit of the St. Joseph and Denver City Railroad Company, the first recipient of these franchises, that in section 5, the last one of the act, it was provided as follows:

"That the St. Joseph Bridge Building Company, after the passage of this act, shall not have the right to assign the charter which said company now holds by assignment from the St. Joseph and Denver City Railroad Company, and which was granted to said last named company by virtue of an act of Congress, approved July 14, 1870, to any other company, person or persons, nor shall said Bridge Building Company be permitted under the said charter so obtained as aforesaid from the St. Joseph and Denver City Railroad Company, to construct any other bridge than the one now being constructed at St. Joseph, Missouri."

17 U. S. Stats. at Large, 33.

On May 1, 1872, this section 5 last above quoted, was amended by Congress by adding thereto the following proviso: "*Provided, however*, That nothing in this section contained shall prevent the said Bridge Building Com-

pary from mortgaging said charter and franchises held by it by assignment from said railroad company, with the bridge constructed or to be constructed thereunder in the manner and for the purposes in and for which the said Bridge Building Company is or may be authorized by or under the laws of the State of Missouri to mortgage its property."

17 U. S. Stats. at Large, 58, sec. 2.

Thus, holding by assignment the original bridge franchises granted to the St. Joseph and Denver City Railroad Company, and also by direct grant from Congress, the St. Joseph Bridge Building Company, in the years 1872 and 1873, erected the railroad bridge over the Missouri River, at St. Joseph, Missouri. (Record, p. 19, item 4.)

From the time said bridge was completed it continued to be the property of the St. Joseph Bridge Building Company, and was operated by it under its franchises until its purchase by the complainant in this case.

Agreed statement of facts, item 5, printed record, p. 19.

The date of this purchase was June 23, 1885.

Agreed statement of facts, item 1, printed record, p. 19.

Since such purchase the said Bridge Building Company has not maintained its corporate organization or existence, and has had no interest in or control over said bridge, and the exclusive operation and management thereof has been had by the agents and servants of the complainant.

Id., item 6, printed record, pp. 19, 20.

The bridge in question joins on to and forms the eastern end of the complainant's line of railroad, which

extends from St. Joseph, Missouri, to Grand Island, Nebraska.

Id., item 2, printed record, p. 19.

The western 926 feet of said bridge is in Doniphan County, Kansas.

Id., item 1, printed record, p. 19.

After its purchase the bridge was used by complainant in connection with its railroad business, and it daily uses the same in passing its trains of cars over said river in the conduct of its business as a common carrier. The bridge thus forms a continuous and connected part and portion of complainant's railroad line.

The complainant stands before this Court as the admitted legal successor by foreclosure proceedings of all the rights and franchises of the old St. Joseph and Denver City Railroad Company.

Id., item 14, printed record, p. 21.

And while that railroad company, it seems, was not able to build this bridge in 1870, when it received the grant from Congress so to do, its legal successor, this complainant, was able, in 1885, to acquire it by purchase, thus accomplishing the expressed purpose named in the act of 1870 to the old St. Joseph and Denver City Railroad Company, of granting to that company "or their assignees" the right "to build a bridge and maintain the same across the Missouri River at or near St. Joseph, Missouri."

14 U. S. Stats. at Large, p. 275.

While the bridge was owned by the St. Joseph Bridge Building Company, it was an independent and separate structure, having no legal connection with the old St. Joseph and Denver City Railroad Company, except that which grew out of the contract by which that railroad

company parted with its bridge franchises as hereinbefore shown.

The Bridge Building Company took "compensation" from all railroads centering there and desiring to cross, and took "tolls" from all wagons, carriages, and foot passengers crossing the bridge, both of these rights being expressly given and granted by the franchises assigned by the old Denver Railroad Company, as well as by the direct grant by Congress to said Bridge Building Company, as heretofore shown. After this complainant, as the legal successor of the old Denver City Railroad Company, became the owner of said bridge, owning and possessing thereby all of the rights and franchises granted by Congress; it also continued to receive "compensation" from other railroads crossing said bridge and "tolls" from wagons, carriages, and foot passengers.

Items 5, 15, 16, printed record, pp. 19–21.

Thus was the bridge owned, used, and operated in 1892 when the present controversy arose.

At the proper time in that year the proper officers of the complainant made return of all of its railroad property to the State Board of Railroad Assessors of the State of Kansas, as by the laws of that State required. This return included as a part of its railroad property that part of the said bridge lying in the county of Doniphan, State of Kansas, viz., 926 feet. The State board, as became its duty under the law, duly valued and assessed all of the railroad property thus returned, and in such valuation and assessment included so much of said bridge as was in said Doniphan County, Kansas, viz., 926 feet, and the value of this part of said bridge was added to the valuation placed upon the rest of the railroad property so as aforesaid returned. The State board then made its return, as by law required, to the several county clerks through whose counties the line of complainant's

road ran, apportioning among said counties the said tax so levied and assessed, and the county clerk of Doniphan County, Kansas, received one of said returns. That thereupon the county commissioners of Doniphan County levied and extended the taxes for the year 1892 upon the valuation so ascertained and apportioned for Doniphan County, and the amount of the railroad tax thus determined to be due Doniphan County for that year was $10,305.20, and this sum was on December 19, 1892, paid in full by complainant to the treasurer of that county.

Id., items 7, 8, 9, 10, printed record, pp. 19–20.

While Doniphan County thus received its share of the value of the bridge as thus valued, assessed and apportioned by the State Board of Railroad Assessors, it also made the claim that the said railroad bridge, notwithstanding it was no longer an independent structure in either ownership or operation, was only a toll bridge under the laws of Kansas, and subject as such to a separate valuation and taxation for the special and exclusive benefit of Doniphan County; that the said bridge was not a part of complainant's line, and should not have been so returned to the State board for taxation purposes; that the State board had no right or jurisdiction to value and include said bridge as a part of complainant's railroad property.

Acting upon this assumption, the county commissioners of Doniphan County fixed the value of the 926 feet of said bridge in their county at the sum of $200,000, and extended the tax thereon for county purposes for that year, amounting to $8,100, and the tax books containing said tax were delivered to the treasurer of said county for collection. The complainant declining to pay this tax, a warrant was issued to R. M. Steele, the defendant herein, who, on the 6th day of February, 1893,

levied on that portion of said bridge in Doniphan County and would have sold the same had his further action not been intercepted by the temporary injunction which issued herein.

Id., items 11, 12, and 13, printed record, pp. 20, 21.

The answer, in addition to the claim as herein stated, set up the further defense of *res adjudicata*. This was based upon the following facts:

In 1889, when the complainant made its return of railroad property to the State Board of Railroad Assessors of the State of Kansas, for assessment and valuation, it seems that it added to the eastern end of its line of road the length of one-half of the bridge—that is, so much of said bridge as was in Doniphan County, Kansas, but it did not include in its return the fact that it included any part of the bridge. The return only showed so much track in mileage. It did not show that the railroad company either owned a valuable and costly bridge, or that it used it in operation of its road, or that a bridge formed a part of the railroad company's line. The valuation, therefore, placed upon the railroad property by the State board did not include the value of the bridge at all. When therefrom the State board sent its return, showing the apportionment of railroad property among the different counties, to Doniphan County, such return included, of course, no part of the value of the bridge. It seems, however, for that year Doniphan County had assumed to tax the whole of the bridge, upon the theory that the boundary line between Kansas and Missouri was the eastern bank of the Missouri River, and that this would throw the whole length of the bridge in Doniphan County. In default of payment of this tax the whole bridge was levied upon by the then sheriff of Doniphan County. This complainant thereupon procured a temporary injunction, resisting the claim of said

county upon two grounds: first, that the boundary line between the two States was the middle of the river, and that as to the Missouri half of the tax it was illegal and void; and second, that as to the tax upon that part of the bridge admitted to be in Doniphan County, it was illegal and void, as the bridge was no longer an independent structure in use and ownership, but was the absolute property of the complainant, and as such, like any and all other bridges it was an inseparable part of its railroad property for all purposes of taxation. Issues were formed in that case and it was tried upon an agreed statement of fact and is reported in 41 Fed. R., 14. Upon the first point raised by Doniphan County, it was beaten, the court holding that the boundary line between the two States was the middle of the river. Upon the second point under the facts as they appeared in the agreed statement of facts, the court held that as the complainant only returned the bridge to the railroad assessors of the State as a part of the mileage, and without in anywise specifying that it was a bridge, the complainant had not, by such a return, shown that they themselves had ceased to claim that the bridge was not a separate structure, and Doniphan County's contention as to the local tax upon half of the bridge was sustained.

As further showing how different the facts in that case were from those in the case at bar, we give here items 9 and 11 of the agreed statement in the first case:

9th. "But that the return made by the complainant, the St. Joseph & G. I. R. R. Co., and the list furnished to the Board of Railway Assessors of the State of Kansas, as aforesaid, did not in terms specify the St. Joseph bridge as such, but as so many miles, and as if the same, the St. Joseph bridge, was a part of the roadbed and side track of said company's railroad."

11th. "That the Board of Railroad Assessors for the State of Kansas in the tax levied and assessed by them

upon the return as aforesaid made by the complainant, did not assess the said bridge or any part thereof as bridge property, their assessment covering only the mileage of railroad and side track as returned by the complainant, as aforesaid."

Printed record, items 9–11, pp. 44, 45.

Thus it appears that in that case the return to the State board did not include the bridge, as a bridge, and the State board did not value and assess the bridge as a part of complainant's railroad property.

In the case at bar the return included the bridge structure as a part of complainant's railroad property, and the State board valued so much of said bridge as was in Doniphan County, and added such valuation to the value of the rest of complainant's railroad property.

Agreed statement, items 7 and 8, printed record, p. 20.

It was, and still is, our contention that such former suit constitutes no bar to this.

Under the issues and the agreed statement of facts, the Circuit Court rendered a decree dissolving the preliminary injunction and dismissing complainant's bill. (For decree, see record, p. 55.)

It is appellant's contention in this Court that said decree is erroneous in holding that the bridge is still an independent structure, when it is neither independent in ownership or management; in holding that the bridge is exclusively taxable by the local authorities of Doniphan County, Kansas, and in further holding that the decree in the case pleaded is *res adjudicata* in this case.

BRIEF.

I.

The policy of the State of Kansas, as most emphatically indicated by its legislation, is, that all the property owned by a railroad company and used in the "convenient and daily operation of its railroad," is to be taxed as an entirety by the State Board of Railroad Assessors.

The following sections of the Kansas statutes establish this position:

"For the purpose of assessment of railroads and the property of railroad corporations, the Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, and the Attorney General are hereby constituted a board of railroad assessors, who are empowered, and it is hereby made their duty, to assess all property of the railroads and railroad corporations in the State of Kansas: *Provided*, That nothing in this section contained shall be construed to include within the meaning of this act any real estate in this State owned by any railroad company and not used or necessary to be used for the convenient and daily operation of its railroads."

General Stats., 1889, sec. 6872.

"The board, when properly organized, as herein provided for, shall proceed to ascertain all the personal property of any railway company owning, operating, or constructing a railway in this State, which, for the purposes of assessment and taxation, shall be held to include the track, roadbed, right of way, water and fuel stations, buildings and land upon which they are situated, adjacent to or connected with the right of way, machinery, rolling stock, telegraph lines, and all instruments connected therewith, material on hand and supplies provided for operating and carrying on such railroad, together with moneys, credits, and all other property of such railway company used, or held for the purpose of

operating its railroad, by such railway company, and appraise and assess such property at its actual value in money."

Id., sec. 6878, last half section.

"On or before the 20th day of March, 1876, and at the same time in each year thereafter, the person, company, or corporation owning, operating, or constructing any railroad in this State, shall, by its president, secretary, or principal accounting officer, return to the Auditor of State a sworn statement or schedule as follows: First. Of the right of way, track and road bed, giving the entire length of the main track in this and other States, and showing the proportion in each city, township, and county, and total in this State. Second. The length of each side or second track and turn-outs, together with the name of the city, township and county in which such side or second tracks and turn-outs are each located. Third. A complete list, giving size, location (as to city, township, and county), material and value of all depots, station houses, machine shops or other buildings situated wholly or in part on right of way, together with all platforms, fuel and water stations, and the machinery and tanks connected therewith. Fourth. Showing the number of ties in track per mile, the weight of iron or steel rails per yard used in main or side tracks, what joints or chairs are used in tracks, the balasting of road, whether with gravel or dirt, the length of time iron has been used, and the length of time the road has been built. Fifth. A full list of the rolling stock, etc., etc. Sixth. A statement or schedule showing the amount of capital stock, etc., etc. Seventh. A correct detailed inventory of the number, kind, and value of all tools and material used for repairs, etc."

Id., sec. 6875.

"The Board of Railroad Assessors, after having valued and assessed all the railroad property in this State in accordance with the provisions of this article, shall, through the Auditor of State, make returns to the county clerks of each and every county in which any portion of said railroad property, as designated in this article, may be located."

Id., sec. 6879.

"Such return shall be as follows: First. Number of miles of main track located in each township in the county, and the total length in the county. Second. The average valuation per mile, such valuation to include the following items: Track, right of way, franchises, road bed, rolling stock, telegraph lines and instruments connected therewith, material on hand, supplies and tools, and all other property used in the operation of the road, and all moneys and credits. Third. The average valuation per mile of all personal property enumerated in this article. Fourth. The amount of valuation that shall be placed to the credit of each city and township in the county as hereinbefore provided for in this section."

Id., sec. 6880.

II.

These sections unmistakably disclose the purpose to make ownership, and use of the property by the railroad company in the operation of its line of road, the only tests whether the railroad company shall include such property in its return to the State Board of Railroad Assessors, and also whether the State board possesses jurisdiction to assess the property so returned to them, as railroad property.

III.

Nothing is contained in these sections which authorize either the railroad company in making its return to the State board, or the State board in determining the question of its jurisdiction, to look any further than the present ownership of the property. These sections give no shadow of a right to inquire whether at some former time some part of the then railroad property might not have had a different ownership, or might not have been an independent structure. The statute as to both the railroad company and the State board imposes a present duty to be determined only by present conditions.

IV.

Item No. 1 of the agreed statement shows that it is admitted that the appellant owned the bridge in 1892, and has owned it since June 23, 1885. (Record, p. 19.)

Item No. 3 of the agreed statement shows that it is admitted that appellant was, at the time stated in the bill, using this bridge in the daily conduct of its business as a common carrier. (Record, p. 19.)

Items Nos. 2 and 3 show that it is admitted that the bridge is a part of the appellant's main line of road. (Record, p. 19.)

Thus do the admissions of defendant furnish all the statutory conditions as to ownership and use of property, necessary by law for its classification for taxation purposes. It thus stands admitted to be of that kind of property, as to ownership and use, which the statutes of Kansas say bring it within the jurisdiction of the State board of railroad assessors.

V.

Not only has the legislative department of the State of Kansas thus clearly shown its purpose that a railroad is an entirety for the purposes of taxation, but the Supreme Court of the State of Kansas, interpreting this legislative purpose, has expressly decided that "a railroad is an entire thing, and should be assessed as a whole."

Railroad Co. *v.* Morris, 7 Kansas, 222, 223.

Items Nos. 2 and 3 of the agreed statement admit the bridge is a part of the railroad line leading from St. Joseph to Grand Island. (Record, p. 19.)

VI.

A railroad from one end to the other is an entirety.

1 Desty on Taxation, sec. 85.

Under statutes similar to those of Kansas as to railroad taxation, it is now the admitted law that a railroad is an entirety and can not be cut up and taxed and sold for taxes in parcels.

2 Roher on Railroads, 1499, 1500;
1 Desty on Taxation, 392, 393;
Railroad Co. *v.* Ryan, 5 Sup. Ct. R., 603;
Railroad Co. *v.* Lafayette, 22 Ind., 262;
Applegate *v.* Ernst, 3 Bush., 648.

VII.

Under statutes adopting such a theory of taxation, every county through which a railroad runs has a legal right to such a share of the whole valuation of the road as the mileage of the road in that county bears to the whole mileage. To cut out an expensive bridge which happens to be wholly in one county, and give that county the exclusive benefit of it would be to deny the other counties a clear statutory right.

VIII.

The bridge being owned by complainant and it forming a part of complainant's line extending from St. Joseph, Mo., to Grand Island, Nebr., and being daily used in the operation of that line, it is our contention that it formed an inseparable part of the complainant's railroad property for all tax-bearing purposes under the laws of Kansas. The following authorities give the fullest support to this position.

State *ex rel.* Glenn *v.* Miss. R. Br. Co., 109 Mo., 253;
Chicago & Alton R. R. Co. *v.* People, *ex rel.*, etc., 38 N. E. Rep., 1075;
Railroad Co. *v.* Williams, 13 S. W. R., 796;
State *ex. rel.* Tillery *v.* Railroad Co., 97 Mo., 348;
Schmidt *v.* Railroad Co., 24 S. W. R., 547;
Railroad Co. *v.* Hall, 91 U. S., 343;
Anderson *v.* Railroad Co., 117 Ill., 26.

In all of these cases the statutory test was ownership of the bridge, thus being exactly in point under Kansas statutes. In several of the cases the same highway feature is presented as in the case at bar, and we ask this Court to specially note that in none of them does this feature have the least influence in the decision of the cases.

IX.

The claim to tax this bridge locally rests solely on section 6852 of the general statutes of Kansas—"All toll bridges shall be listed in the township or ward where the same are located, and if located in two wards or townships then one-half in each of such wards or townships."

This section is a part of the act which provides for the assessment and taxation of railroads and railroad property, and the several provisions must be considered together, and so considered it seems evident that the legislature of Kansas, in providing for the local listing and taxation of toll bridges, only had in contemplation such toll bridges as did not form a part of a railway line and are not the property of a railroad corporation.

Under section 6872 of the Kansas statutes, heretofore cited, it is the duty of the State board "to assess all property of the railroads and railroad corporations in the State of Kansas." Afterwards, in the same act, there are certain specified exceptions of property which is not to be listed and assessed by the State board, but is to be listed and taxed locally. The exceptions, however, do not include bridges of any kind, and therefore we are led irresistibly to the conclusion that all property of every kind owned by a railroad corporation in the State of Kansas, except such as is specifically excepted, must be listed and assessed by the State board.

It is the policy of Kansas to distribute the taxable

valuation of all railway property over the whole line. It is evidently deemed to be unjust that any one county, city, or school district having within it a valuable terminal property or costly railroad structure should have the entire revenue arising from its assessment and taxation. If this be true, the reasoning applies with double force to the case of a railway bridge over the Missouri River such as the one in the case at bar.

What possible reason can there be for distributing the valuation of a great terminal plant along the entire line, and at the same time providing that the entire valuation of a great railway bridge shall be given to the local municipal subdivision in which one end of the bridge is located? It is not sufficient to say that because this bridge was originally constructed as a toll bridge, and was taxable locally under section 6852 above cited, while it remained the property of a corporation not a railroad corporation, it continues taxable under the same section and in the same manner after its purchase by a railroad company and its absorption into the railway line of the railway company. The warehouse owned by private parties is taxable locally under the general laws of Kansas; but if a railroad company runs its line alongside that warehouse, and purchases the warehouse and converts it into a freight depot, can it be contended that the right of local taxation continues against that building? The iron rails, so long as they are owned by and in the possession of the manufacturer, the ties, until they are purchased by the railway company, are taxable wherever situated; but the moment they become the property of the railroad company the right of local taxation is at an end, and they must be returned for valuation and assessment to the State board, and this is true whether they have been placed in the railway line or not.

All the property of every kind and description which

is condemned and secured by a railway company is taxable locally up to the time the title is transferred to the railroad company, and must be returned to and assessed by the State board. It is not necessary that there shall be any change in the property itself. The method of assessment and taxation changes with the change in ownership. If the appellant in this case had constructed this identical railroad bridge across the Missouri River, and now owned and operated it exactly as it does, there is no question but what it would be the duty of the railroad company to return it to the State board for valuation and assessment. Does it make any difference that instead of building the bridge the railroad company purchases it? We can not think so.

X.

The claim of Doniphan County to tax this bridge as a toll bridge can not be sustained. This bridge franchise was originally granted by Congress to the St. Joseph and Denver City Railroad Company. The grant was principally intended to enable that railroad company to build a bridge to cross its trains over the Missouri River at St. Joseph, Missouri. Permission, however, was given to prepare this railroad bridge for wagons, carriages and foot passengers, but this part of the grant was only permissive, not mandatory or obligatory even, "may" was the word used, but if prepared for this general use then the company was given the right to charge tolls.

16 U. S. Stats. at Large, p. 275.

Now, if the St. Joseph and Denver City Railroa l Company had built this bridge themselves, it would hardly be contended that it would not have formed a part of that company's railroad line, to be taxed by the State board, as a part of that company's railroad property,

and the fact that this highway feature was in full use would not have converted the bridge into a toll bridge subject exclusively to local taxation as such.

As it is admitted by item 14 of the agreed statement, that complainant, as to this bridge, is the legal successor of the rights and franchises of the St. Joseph and Denver City Railroad Company, it follows that the continued use by the complainant of this highway feature, and the taking of such tolls as are expressly allowed by the franchises, will no more destroy the character of the bridge as a railroad bridge and as a part of the railroad line, than if it had been built by the St. Joseph and Denver City Railroad Company. And this argument is strengthened by the fact that these rights and franchises were not granted alone and exclusively to the St. Joseph and Denver City Railroad Company, but to that company "or its assignees."

16 U. S. Stats. at Large, p. 275.

And in 1872, when the Bridge Building Company applied direct to Congress for permission to build this bridge, we find that the right to receive these tolls for the highway feature is there also granted "to the owners of said bridge."

17 U. S. Stats. at Large, p. 58, sec. 1.

XI.

The original conception of this bridge was that of a railroad bridge. The franchise was granted to a railroad company to whom the national favor had been manifested by a land grant to construct a line of railroad. To cross the Missouri River at St. Joseph with the railroad company's cars was the clear purpose of the act.

16 U. S. Stats. at Large, p. 275;

14 U. S. Stats at Large, p. 244, sec. 1.

In 1872 the railroad company assigned this bridge franchise to the St. Joseph Bridge Building Company, and the express purpose of the assignment was to provide for the building of a railroad bridge. (Record, p. 22.)

As State authority would not enable this Bridge Building Company to span a navigable river, that company applied direct to Congress for a ratification of the right it already held by assignment, and in the first section of the act which was passed granting such permission, the purpose of Congress in granting the franchise originally was clearly stated to be "to construct a bridge across the Missouri River at or near St. Joseph, Missouri, and to lay on or over said bridge railway tracks for the more perfect connection of any and all railways that are now, or which may hereafter be constructed to the Missouri River, at or near St. Joseph, or to the river on the opposite side of the same near St. Joseph."

U. S. Stats. at Large, 1872, p. 33, sec. 1.

And in pursuance of the original purpose of Congress, that this bridge should continue to be a railroad facility, for the special benefit of the St. Joseph and Denver City Railroad Company, section 2 of this act contained a prohibition against the Bridge Company assigning "the charter which said company now holds by assignment from the St. Joseph and Denver City Railroad Company, and which was granted to said last-named company, by virtue of an act of Congress, approved July 14, 1870, to any other company, person, or persons."

Id., p. 58, sec. 2.

Thus it is shown that this bridge was originally stamped with the unmistakable character of a railroad bridge; that the highway feature was a mere incident to the main purpose of the bridge; that the bridge is now used in the execution of the purposes originally intended,

and owned by the legal successor of the original grantee of the bridge franchises. When thus owned and used, taking such tolls as are allowed by the charter works no change in the character of the bridge.

97 Mo., (*supra*) 797; see facts of case.

The last two points have been made to show how untenable is the position of Doniphan County, that this bridge always was and still is a toll bridge. There is not a decided case where the question, whether the State board or the local authorities possessed the right to tax, has been determined in favor of the local authorities by the mere fact that tolls were incidentally taken as they were and are in this case.

XII.

Supposing the bridge had been built originally by the first grantee of the franchise, the St. Joseph and Denver City Railroad Company; there can be no doubt that the structure would have been properly returnable as a part of the railroad line, and properly taxed by the State board as a part of the railroad property. But, supposing thereafter the railroad company should sell the bridge to an incorporated bridge company; it is equally as evident, that after such sale, the bridge would cease to be railroad property, and would then have to be taxed as as an independent structure. And the plain reason for this change in the method of taxation would be that the ownership of the property had changed. Now, supposing, that after it had thus remained an independent structure for several years, it should be resold to the railroad company; would not the question of ownership again determine the method of taxation?

XIII.

The court below held that this bridge was still an independent structure in 1892. Yet item 1 of the agreed

statement admits that the bridge is now, and has been for several years, owned by the complainant. (Record, p. 19.) It is not, then, independent in ownership.

Item 6 of the agreed statement admits that since complainant's ownership of said bridge its operation and management have been by the agents and servants of complainant. (Record, p. 20.) It is not, then, independent in management.

In what legal sense, then, is it an independent structure?

XIV.

The court below put prominently to the front as one of the reasons influencing his decision, that "the bridge was not constructed as a part of any railway company's line of road." We have already shown in points 9 and 10 of this brief, that the assignment of the bridge franchises to the Bridge Building Company was only in fact to accomplish the very purpose Congress had in view in its grant to the railroad company, viz., to afford railroad facilities to the St. Joseph and Denver City Railroad Company. We desire now, however, to show just how much weight the courts have given to this main controlling idea upon which the lower court based his decree.

In the 109th Mo., cited by us under point 8, two railroads, one an Illinois and the other a Missouri corporation, but both under the same management, met upon opposite banks of the Mississippi River. For years a ferry boat was the means of connection between them. Finally the Missouri Railroad Corporation obtained a bridge franchise from Congress to span the river, but instead of building the bridge itself, a bridge company built it under the franchises already granted to the railroad company. After it was finished the bridge company leased the bridge "forever" to the Illinois Railroad

Company, which operated both railroad lines upon certain conditions. There was a provision in the lease that in case of default the lessor might re-enter and dispossess the lessee. The same question is there presented as to taxation of this bridge that is presented in this case. The Supreme Court of Missouri held, notwithstanding the long term of the lease, that the Bridge Company still owned the bridge, and that the retention of the ownership imposed the burden of taxation. If there had been an absolute ownership of the bridge in the railroad company, the decision of the case would have been that it was railroad property, assessable by the State Board of Missouri.

100 Mo. (*supra*), 259–260.

The Supreme Court of Missouri did not say that because the bridge was not constructed as a part of the railroad company's line therefore it was an independent structure and taxable locally. The Missouri statute made the question of ownership the test—so do the statutes of Kansas.

XV.

That this bridge was intended as distinctively a railroad facility, as a railroad bridge, and that Congress did not intend its character to be changed by attaching to it a highway feature as an incident merely, is further very clearly shown by the bridge being declared, both in the original grant to the St. Joseph and Denver City Railroad Company, and in the direct grant subsequently to the Bridge Building Company, as a post route.

16 U. S. Stats. at Large, p. 275.

17 U. S. Stats. at Large, p. 34, sec. 3.

XVI.

The toll-bridge feature, even of this structure, can not be the subject of paternal care or interest from the State

of Kansas. It was not erected under its laws. It did not derive the sovereign right to take tolls from the State of Kansas. It did not get into corporate life from the State of Kansas. The State of Kansas has no right to regulate the tolls charged. The State of Kansas could not, by *quo warranto*, take away this franchise. In no respect is it a toll bridge under Kansas laws, either for regulation or taxation.

XVII.

The very manner in which Doniphan County assumed to tax this bridge is an admission that it is railroad property and not an independent structure. It is assessed and taxed as the "Union Pacific Railroad Company's toll bridge."

Agreed statement, item 20, record, p. 21.

XVIII.

The court below committed an error in holding that the case of Railroad Company *v.* Devereux (41 Fed., 14), was *res adjudicata* of this case.

In that case the bridge, as a bridge, was not included in the railroad company's return to the State board, neither did the State board value and assess the bridge, nor include it in the total valuation of the railroad property.

Items 9–11, record, pp. 44, 45;
See, also, 41 Fed., 14.

Upon this state of facts, as the railroad company had not returned the bridge for taxation to the State board, and as the State board had not included it in the valuation of the railroad property, Judge Brewer allowed the local tax to stand, holding that the simple return of the bridge as so much "railroad track, and without in any wise specifying that it was a bridge," did not show facts

upon which he could exempt it from local taxation. The facts did not present the case upon its merits, and five lines in the opinion were all that was given to the question.

41 Fed., 15.

But the question is now presented to the court under very different facts. The railroad company's return for 1892 included the bridge, as a bridge, and as a part of its line of road. The State board valued and assessed the bridge, and added its value to the value of the railroad property.

Items 7 and 8, record, p. 20.

And by proper apportionment Doniphan County was given its share of the value of the bridge, and was paid its tax thereon.

Items 9 and 10, record, p. 20.

We say as a matter of law, when the question presented to a court for decision is, which of two taxing tribunals has jurisdiction to impose a tax, that all of those facts which are necessary to bring into action the taxing power of each tribunal should be shown by the facts in the case and considered by the court in passing upon the question. And if the evidence before the court shows that none of the facts essential to the exercise of the power by one taxing tribunal were before the court on the first trial, then its decision would not be controlling when subsequently a court should be called to pass upon the question under a state of facts embracing all those facts essential to the exercise of the taxing power by both tribunals.

"If one judgment is absolutely to conclude the parties to any similar controversy, we ought to know to a certainty, almost, that all the facts and questions of law

upon which the former judgment was rendered were substantially the same in the other controversy."

1 Hermon on Estoppel, etc., pp. 101, 102, 105;
Spurlock *v.* R. R. Co., 76 Mo., 67;
Spradling *et al. v.* Conway *et al.*, 51 Mo., 51.

XIX.

But opposite counsel may say that the principles of *res adjudicata* apply not only to all matters actually considered and decided by the court, but to all matters which might have been decided.

We answer, first, the facts were not before the court in the first case upon which it could consider the questions now presented. For instance, in the first case the railroad company's return did not show that it owned this bridge, or that it used it in the daily operation of its road, or that this bridge was a part of the railroad company's line of road. As Judge Brewer says, the railroad company's return did not "in anywise specify that it was a bridge." None of the essential facts were before the State board to give it jurisdiction, and to enable it to include the bridge and to value it and assess it as a part of the railroad property, and it accordingly did not assess and value the bridge at all. In the case at bar, however, all those facts, as already shown, are here.

But we say further, that where the second controversy is over a different cause of action, then the well established rule of law in this court is, that the judgment in the first suit is conclusive only as to the questions actually litigated and determined, and not as to the other matters which might have been litigated.

Nesbit *v.* Independent Dist. of Riverside, 12 Sup. Ct. R., 746; S. C., 144 U. S., 610;
Cromwell *v.* Sac. Co., 94 U. S., 351.

In the case just cited in the 12th S. C. R., the judgment in the first suit was held no bar, for the reason that

in the second suit the defendant added to the same defense that was set up in the first suit proof that the plaintiff had notice of certain facts constituting a defense.

In discussing this point, Judge Brewer, speaking for the court, says:

"In the suit at Des Moines no notice to the holder was shown. * * * In this action notice is proved, and an additional fact is put into the case, which makes a new question. The effect of recital is one thing, that of recital coupled with notice is another. The one question was litigated and determined in the Des Moines suit, the other is presented here; surely an adjudication as to the effect of one fact alone does not preclude, in a second suit, an inquiry and determination as to the effect of that fact in connection with others."

12 S. C. R., 748, top of right hand column.

See, also—

State *v.* Kaufman, 45 Mo. App., 656;

Starling *v.* Weir Plow Co. *et al.*, 49 Fed. Rep., 637;

Starling *v.* Weir Plow Co. *et al.*, 53 Fed. Rep., 119;

Wilmington R. R. Co. *v.* Alsbrook, 13 Sup. Ct. R., 72.

This case affirms the Supreme Court of North Carolina in holding that a former suit was not *res adjudicata* for the reason that the cause of action was different in that the taxes sought to be enjoined in the first suit were for a different year from the taxes sought to be enjoined in the second suit.

14 S. E. R., 652;

Milne *v.* Dean, 7 Sup. Ct. Rep., 1006, 1007;

R. R. Co. *v.* Supervisors, etc., 48 Wis., 675, near top of page;

79 Mo. (*supra*), 351, middle of page;

1 Herman on Estoppel and Res Judicata, sec. 211.

XX.

The decision of Judge Brewer in the case of Railroad Company *v.* Devereux can be maintained upon a proposition which would not make it *res adjudicata* as to the case at bar. Under the agreed statement of facts in that case (item 9, p. 44 of the record), it appears that the return of the railroad company to the State board of Kansas "did not in terms specify the St. Joe bridge aforesaid or any portion of the same as such, but as so many miles of, and as if the same, the said St. Joseph bridge, was a part of the road bed and side tracks of the said complainant's railway." It further appears (item 11, p. 45 of the record), "that the board of railroad assessors for the State of Kansas in the tax levied and assessed by them upon the return as aforesaid made by the complainant did not assess the said bridge or any part thereof as bridge property, their assessments covering only the mileage of railroad and side tracks as returned by the complainant as aforesaid."

The effect of these admissions is to clearly demonstrate that the return was imperfect, and that under it the valuable bridge property escaped taxation; that if any part of this valuation was included in the entire valuation of the whole line it was only such part as would be represented by 926 feet of ordinary railroad; that is, no more than the valuation of about one-sixth of a mile of ordinary railroad (perhaps one or two thousand dollars) was added to the general railway valuation by the State board on account of any supposed inclusion of the St. Joe bridge in the general return of the railway company. The bridge, therefore, in that year was not listed and assessed as by law provided. It escaped from the tax list, and, having so escaped, the laws of Kansas authorize its local assessment and taxation. In support of this we cite the following note to section 6872, being section 26 of the chapter on taxation of the General Statutes of Kansas, 1889:

"Railroad property, both in cities and in townships, is assessed by a board of railroad assessors. (Tax Law, section 26.) And where property is omitted from the assessment roll, whether the property is in a city or in a township, the county clerk may assess the same (Tax Law, sections 18, 52, 53, 54, 70), and the county board as a board of equalization may increase or diminish the assessment of any particular piece of property. (Tax Law, section 74.)"

Ritchie *v.* Mulvane, 39 K., 251.

The judgment in the Devereux case was therefore correct, and can be maintained irrespective of the decision of the question as to whether or not the bridge was the property of the railroad company which the State board had the right to value and assess.

In the case at bar it is agreed that the entire bridge property in the State of Kansas was returned to the State board in a return so framed as to clearly show the character of the property, and it is admitted that the State board added the valuation of that bridge to the general valuation of the property of the railroad company in the State. That valuation was distributed pro rata along the entire line of the railroad, and upon that valuation it is conceded the railroad company paid its taxes in the State of Kansas. No suggestion is made that the valuation of the bridge as fixed by the State board, and added to the valuation of the general property of the railroad, was insufficient or inadequate. It stands admitted that the railroad company paid a tax on its bridge in the State of Kansas for the entire value thereof. It had not done so in the Devereux case.

XXI.

But we insist that the Devereux case is not *res adjudicata* of the rights of the appellant in the case at bar for another and, as it seems to us, conclusive reason.

The judgment in the Devereux case bound the defendant as to the particular tax in controversy, whether the court properly interpreted and construed the statutes of Kansas or not. If the court properly interpreted and construed the statutes of the State of Kansas in the Devereux case, of course that same interpretation and construction must be applied to the case at bar, and is decisive of the present controversy. But the real contention here is that the interpretation and construction of the statutes of Kansas as made by the court in the Devereux case, right or wrong, must be applied in the case at bar, on the theory that such construction and interpretation having been made by a court in a controversy between substantially the same parties and with respect to a tax on the same property, must be adhered to for all time to come in its application to the assessment and taxation of the St. Joe railroad bridge.

Is the State of Kansas bound by that interpretation of its law if the interpretation is wrong? Can not the State board of Kansas, if a proper construction of the statute authorizes the assessment by the State board of the St. Joe bridge, as a part of the railroad line, insist upon including its valuation in the general valuation of the railroad? If the railroad company is bound, the State of Kansas is bound. If the State of Kansas is bound, each county and municipal subdivision along the entire line of railroad that has a right to insist upon its due proportion of the general valuation of the entire line is also bound; and none of such municipal subdivisions were parties to the Devereux case.

The law does not permit a double taxation of property. It is unnecessary to discuss such a proposition. The Constitution of the United States and the Constitution of the State of Kansas protect this railroad bridge from being assessed and taxed by both the local authorities and the State board. If the local authorities have the

right to assess it the State authorities have not, and *vice versa*. As already suggested, the State of Kansas is not estopped by the decision in the Devereux case. If the laws of Kansas, properly construed, authorize the assessment by the State board, an assessment by that board will stand, and against the collection of a tax based upon such an assessment by the several counties along the railroad line the company could not plead the decision in the Devereux case as a bar. It follows, therefore, that the court must decide in this case as to the true construction of the Kansas statutes. It will not do to blindly follow the judgment in the Devereux case, for if that judgment is based upon an erroneous construction of the Kansas statutes then the St. Joe bridge will be compelled to pay double taxes on the same property for all time to come. It must submit to the State assessment and taxation because such is the law; and it must submit to the additional local assessment and taxation because a court with respect to one tax assessed against the bridge reached a wrong conclusion. We submit that an erroneous construction of the general statutes of the State governing taxation should not be followed in any case, whether between the same parties or not.

We insist that the doctrine of *res adjudicata* does not compel a court to adopt or apply a wrongful statutory construction in any other case than the one in which the judgment based upon such wrongful construction was entered. The court in this case, of course, should give due weight and consideration to the construction placed upon the Kansas statutes in the Devereux case, but if that construction is wrong it should not be followed or applied again. That it was wrong, we confidently assert; and, if wrong, the railroad company, on the theory of the decision below, is bound for all time to come to submit to a local assessment of its railroad bridge, and also to submit to a general assessment of all

its property, including the bridge, by the State board, and is therefore bound to submit to a double taxation of the same property indefinitely, without remedy or relief; for, as against the continuing local assessment, it is estopped from pleading the real law of Kansas, and as against a general assessment it could not plead the bad law of the Devereux case, because the State of Kansas and the other municipal subdivisions interested in the State assessment were not parties thereto. For these reasons we confidently ask a reversal of the decree entered by the Circuit Court of Appeals.

JOHN M. THURSTON,
Solicitor for Appellant.

JOHN F. DILLON,
Of Counsel.

167-659

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
CLERK

NO. 256

In the Supreme Court of the United States

OCTOBER TERM, 1896.

THE ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY, *Appellant*,

vs.

R. M. STEELE, SHERIFF DONIPHAN COUNTY, KANSAS, *Appellee.*

BRIEF OF ARGUMENT FOR APPELLEE.

P. L. SOPER,
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Of Counsel.

Ketcheson & Reeves, Printers, Leavenworth

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BRIEF OF ARGUMENT FOR APPELLEE.

The appellant contends that it has the right to hold the toll bridge spanning the Missouri river between St. Joseph, Missouri, and Elwood, Kansas, free from taxation by the local authorities of Doniphan county, Kansas, in which county there is located a large portion of said bridge, and this suit was begun to enjoin the sheriff of Doniphan county, Kansas, from selling the bridge, or that portion within Doniphan county, Kansas, for the non-payment of taxes due for the year 1892. The bridge was built in 1872 and 1873, by a bridge company, under authority from the United States to construct and maintain the same, and to collect tolls from railroads, foot passengers, teams, etc. The appellant purchased the bridge in 1885, and maintains that its ownership relieves the bridge of its character as a toll bridge, and that upon its purchase

it became solely a part of the roadbed as so many feet and inches of its main line. On February 8, 1889, The St. Joseph & Grand Island Railroad Company brought an action in the United States Circuit Court for the District of Kansas, being the same Court in which the present suit was instituted, to enjoin the collection of a similar tax levied by the same authorities for the year 1888. The appellant in that case (see printed record, pages 27 to 34 inclusive) alleged in substance that the bridge in question was a part of its roadbed and was assessable solely by the Board of Railroad Assessors of the State of Kansas, and that the assessment upon said bridge, made by the Assessor within which township said bridge was located, for the year 1888, and the taxes levied and extended on such assessment, were illegal and void and not chargeable to said railroad company. The only difference between that suit and the case at bar is that the Township Assessor assessed the entire bridge, claiming that the entire bridge was within Washington township, in Doniphan county, Kansas. In that suit there was not only involved the question of the boundary line of the State of Kansas and Missouri, but before the said boundary line could be considered in said suit there was the primary question of whether the bridge could be legally assessed at all by the Township Assessor of Doniphan county, Kansas, and taxed by the proper authorities of said Doniphan county. In that case, as in the case at bar, appellant claimed that the sole authority to assess said bridge was vested in the State Board of Railroad Assessors and not in the local authorities of Doniphan county, Kan-

sas. Upon the hearing the Court found that the center of the channel of the Missouri river was the boundary line between the States of Kansas and Missouri, and sustained the right of the authorities of Doniphan county, Kansas, to collect taxes upon that portion of the bridge which was within Doniphan county, Kansas, as shown by an agreed statement in said case, which was 926 feet of the bridge. From this suit no appeal was taken, and it is the contention of appellee that the bridge is taxable by the proper authorities of Doniphan county, Kansas, and that every point involved in this suit has already been adjudicated in the case of *The St. Joseph & Grand Island Railroad Company vs. Devereux*, 41 Fed. Rep. 14, and that the record in that case is as a plea, a bar, and as evidence conclusive against the right of appellant to any relief in this suit.

Appellee contends that the substance of the entire assignment of errors of appellant may be resolved into the following propositions:

1. Is appellant estopped and barred from obtaining the relief sought in its bill, by reason of the final adjudication in the case of *The St. Joseph & Grand Island Railroad Company vs. John Devereux, Sheriff of Doniphan county, Kansas?* (See printed record, pp. 27 to 52 inc.)

2. Is the bridge taxable as an independent structure by Doniphan county, Kansas, or by the State Board of Railroad Assessors of the State of Kansas, as an indivisible and indistinguishable part of appellant's railroad property in the State of Kansas?

I.

IS APPELLANT ESTOPPED AND BARRED FROM OBTAINING THE RELIEF SOUGHT IN ITS BILL, BY REASON OF THE FINAL ADJUDICATION IN THE CASE OF THE ST. JOSEPH & GRAND ISLAND RAILROAD COMPANY V. JOHN DEVEREUX, SHERIFF OF DONIPHAN COUNTY, KANSAS?

Counsel for the appellant seek to avoid the effect of the former judgment as a plea (see P. R., pp. 13 to 20) held by the trial judge to be a bar to this action, by asserting that there is a difference in the form of the allegations in the two cases of a fact definitely set forth in both. (See P. R., pp. 2 to 7 inc.)

The attention of the Court is respectfully invited to the bill of compiaint in the Devereux case. (See P. R., pp. 32 to 39 inc.)

In that bill, we find the following averments:

"And your orator further alleges that neither the county nor township authorities or assessors of said Doniphan county have or had any authority or jurisdiction to levy, assess, extend or charge up any taxes whatever against any part of the said railroad bridge of your orator in said Doniphan county. That said State Board of Railroad Assessors had exclusive jurisdiction for assessing the said property to your orator in said Doniphan county for the year 1888. * * *" (See P. R., p. 37.)

"That your honors will find and decree that the boundary line between the State of Kansas and the State of Missouri, etc. * * * That the said bridge of your orator over the said Missouri river is a part of its railroad, and is and was assessable in the State of Kansas for the year 1888 by the said Board of Railroad Assessors of said State only.

"That the said assessment of said bridge of your orator made by the said Thomas B. Hickman for the year 1888,

the taxes levied and extended on such assessment are illegal and void, and not chargeable to your orator or its property." (See P. R., p. 33.)

Issue was properly joined by the defendant, sheriff of Doniphan county, upon the above allegations and prayer. (See answer of defendant, P. R., pp. 38 to 41 inclusive.)

In the stipulation of facts agreed upon between the complainant and the defendant are the following:

"1st. That the complainant, The St. Joseph & Grand Island Railroad Company, is the owner and lawfully in possession and enjoyment of the bridge over the Missouri river at St. Joseph, Missouri, the western terminus of which is in Doniphan county, Kansas.

"2d. That said complainant operates its trains over said bridge as a part of its railroad, and likewise charges and collects tolls for the passage of foot passengers, wagons and carriages over the same, and derives an annual revenue from the general public of about nine thousand dollars a year."

"7th. That the complainant, through its proper officers for the year 1888, made due return of all its railroad property, tracks and side-tracks to the State Board of Railroad Assessors for the State of Kansas, and which return included as a part of its roadbed that part of the bridge lying west of the center of the draw-span aforesaid."

"11th. That the Board of Railroad Assessors for the State of Kansas, in the tax levied and assessed by them upon the return as aforesaid made by the complainant, did not assess the said bridge or any part thereof as bridge property; their assessment covering only the mileage of railroad and side-tracks as returned by the complainant as aforesaid."

"13½. It is further stipulated by and between the parties hereto, that if the east bank of the Missouri river is the east boundary of the State of Kansas, between the counties of Buchanan, Missouri, and Doniphan, Kansas, and if said

bridge constitutes no part of the railroad of The St. Joseph & Grand Island Railroad Company, and was not assessable by the Board of Railroad Assessors of the State of Kansas alone; and, if the local authority or assessor in Doniphan county, Kansas, had authority to assess said bridge, then the assessment so made in 1888 by said local authority was regular in form and valid."

(See P. R. pp. 43 to 46 inc.)

The sole questions raised in the Devereux case were, *first*, the right of Doniphan county to tax the bridge at all; and, *second*, if the bridge was taxable by Doniphan county, what portion of said bridge could it tax? If the question of the power of the local authority to tax the bridge was not in the case, the question of the boundary line between the States of Kansas and Missouri was idle, and not properly before the Court.

The relief prayed for by The St. Joseph & Grand Island Railroad Company in its bill of complaint in the Devereux case was for a permanent injunction enjoining the sheriff of Doniphan county, then Devereux, from selling the identical bridge now in question in the case before this Court, for the taxes levied by the local authorities of Doniphan county, Kansas. Before the United States Circuit Court for the District of Kansas could go into any question at all it was absolutely necessary to decide that the local authorities of Doniphan county, Kansas, had a right to assess and levy a tax upon said bridge and to collect the same, for if the local authorities were entirely without right and their action was illegal and void, the relief prayed for should have been

granted as a matter of right, and the question of the boundary line between the States of Kansas and Missouri could not properly be adjudicated in the suit, for the reason that the defendant had no standing in Court or right to have said question decided.

The right to tax being established, the portion of the bridge which should be taxed by Doniphan county was next necessarily defined, and dependent entirely upon the right to tax at all. The right to tax the bridge in the State of Kansas owned by the railroad company could not vest in the State Board of Railroad Assessors and in the local authorities of Doniphan county at the same time; and it may be proper to note here, that the laws of the State of Kansas respecting the taxation of railroads and toll bridges in 1888 have not been changed, and are still in force. A careful examination will reveal that the question of the taxability of the bridge under existing conditions was fully at issue and was clearly in the mind of his Honor Judge BREWER, when he passed judgment in the Devereux case. In his opinion, he says:

"The bridge was built under a special charter, but afterwards became the property of the railroad company, the complainant. Complainant returned the bridge to the Railroad Assessors of the State as a part of its mileage, and without in any wise specifying that it was a bridge. * * Two questions are presented: *First*, Is it wholly within the county of Doniphan?—and that depends upon where the boundary-line between the State of Kansas and Missouri is; whether in the center of the main channel or on the east bank of the river.

"*Second*, Did the return of this as a part of the railroad track exempt it from subjection to taxation as an independent structure in Doniphan county?"

(See P. R., p. 47.)

Counsel for appellant insist that the words of Judge BREWER, "Without in any wise specifying that it was a bridge," takes the litigation in that suit out of the rule which appellee seeks to apply in the case at bar, for the reason that the bridge was not specified *eo nomine*, although it was included as a part of the mileage of appellant, and so taxed.

In the trial of the case at bar in the United States Circuit Court for the District of Kansas, and in the argument upon appeal before the United States Circuit Court of Appeals for the 8th Circuit, counsel for appellant maintained that in the case which appellee pleaded as a bar to the right of appellant to maintain the present action, the bridge was returned as so much railroad track, entirely ignoring the question that the pleadings in the Devereux case had raised, to-wit: the authority of the Township Assessor of Washington township in Doniphan county, Kansas, to assess, and of the local authorities of Doniphan county to tax said bridge, and without the authority of the local authorities of Doniphan county to tax said bridge or some portion thereof, being upheld, the relief prayed for would have been granted. The contention of counsel for appellant that the case was not presented upon its merits seems to us utterly without foundation, and the fact that only a few lines in the opinion of Judge BREWER were given to that question, seems to us

to be conclusive that the right of Doniphan county to tax the bridge was clearly involved in the suit, and that the principle of taxation was too plain to be discussed at length. As the Court says:

"With respect to the latter question, there can be little doubt. The bridge was not constructed as a part of the railroad. It is a costly structure, used for general purposes of travel, and the fact that the railroad company has its rails upon and runs its trains across it does not destroy its original character as an independent structure. *It is clearly subject to local taxation.*"

The ownership of the bridge in question at that time was in The St. Joseph & Grand Island Railroad Company. Counsel for appellant, however, in their brief, filed in the United States Circuit Court of Appeals for the 8th Circuit averred:

"But the question is now presented to the Court under very different facts. The railroad company's return in 1892 included the bridge as a bridge, and as a part of its line of road. The State Board valued and assessed the bridge, and added its value to the value of the railroad property."

The only difference really is that in the Devereux case they simply made a return of the track and roadbed; in the present case they specify 926 feet of their mileage as the St. Joseph bridge. If the contention of counsel is correct, that the bridge in question is a railroad bridge, why did appellant specifically return this bridge and omit to specifically return the bridges over the Blue and the Nemaha rivers, also within the State of Kansas. (See

§2, additional agreed statement of facts in the case at bar, P. R., p. 26.)

In our opinion this has nothing to do with the scope of the decision in either case. The right to tax property is vested by law in certain bodies, and if the property in question was such as should be returned by the railroad company to the State Board of Railroad Assessors, and could only be assessed and taxed by that Board, under no circumstances would a failure to assess and tax the property by the State Board of Railroad Assessors confer jurisdiction upon the local authorities of Doniphan county to do so. So that, the very right to tax said bridge as an independent structure, to wit: a toll bridge, was at issue in said suit; and it being decided therein that the county had the right to tax, that the question is *res judicata*, and determinative of the right to tax in the case at bar.

The statute of the State of Kansas, hereafter quoted, makes toll bridges taxable only by the local authorities. Hence, it is immaterial what the return of the railway company to the State Board of Railroad Assessors specified. The law makes it their duty to inspect and assess, and their failure to act could not confer jurisdiction upon any other authority to tax. The plea is that the matter appealed from to this tribunal has already been adjudicated between the same parties on substantially the same allegations and issues joined, and that the appellant is estopped from prosecuting this action.

But counsel on the other side say that the cause of action is different, in that the taxes sought to be enjoined

in the first suit were for another year from the taxes sought to be enjoined in the second suit. The argument of counsel is, that being beaten in their effort to enjoin the collection of taxes for one year, they may come again to Court to defend against each tax for succeeding years; that one suit, covering with its decree the power of the taxing authority to levy taxes for a given year, would not, on the same questions of law, be a bar to litigation over taxation by the same authority for the next year. It is submitted that it would be quite as conclusive to say that the plea is bad because the sheriff, Devereux, the defendant before, is not the same person as Steele, sheriff in the suit at bar. That the parties are the same in law, passes without challenge in the case. The identity of the suit pleaded in bar is relied on as equally undeniable.

Calling the attention of the Court again to the issues involved in the Devereux case, and to the agreed statement of facts upon which that case was tried, we submit that the right of Doniphan county to tax said bridge as an independent structure, notwithstanding it is owned by the Railroad Company, has been finally determined by a judgment of a Court of Record, which judgment stands to-day in full force and effect, unappealed from and unreversed. See—

Wilson's Ex. v. Deen, 121 U. S. 532.
Cromwell v. County of Sac, 94 U. S. 351.
Bissell v. Spring Valley Twp., 110 U. S. 162.
Elgin v. Marshall, 106 U. S. 578.
Buckhead v. Brown, 5 Sanford, 141.
Bull v. Hopkins, 7 Johns, 21.

Aurora City v. West, 7 Wall. 106.
Johnson Co. v. Wharton, 152 U. S. 256, etc.
Lumber Co. v. Buchtel, 101 U. S. 638.
Dowell v. Applegate, 152 U. S. 342–344.
Stockton v. Ford, 18 How. 418, 420.

If it be held that the case at bar is different from the Devereux case, because over taxes for another and different year, the appellant is still estopped by the doctrine in the case of *Wilson's Ex. v. Deen*, 121 U. S. 532, in which the Court says:

"In *Cromwell v. County of Sac*, 94 U. S. 351, we considered at much length the operation of a judgment as a bar against the prosecution of a second action upon the same demand, and as an estoppel upon the question litigated and determined in another action between the same parties upon a different demand, and we held, following in this respect a long series of decisions, that in the former case the judgment, if rendered upon the merits, is an absolute bar to a subsequent action, a finality to the demand in controversy, concluding parties and those in privity with them; and that in the latter case—that is, where the second action between the same parties is upon a different demand—the judgment in the first action operates as an estoppel as to those matters in issue, or point controverted, upon the determination of which the finding or verdict was rendered."

See also

Lumber Co. v. Buchtel, 101 U. S. 638, 639.
Stockton v. Ford, 18 How. 416, 420.
Stout v. Lye, 103 U. S. 66, 71.
Southern Minn. Ry. Ex. Co. v. St. Paul & S. C. Ry. Co., 5 U. S. C. Ct. of Appeals, 249 (55 Fed. Rep. 690.)

IS THE BRIDGE TAXABLE AS AN INDEPENDENT STRUCTURE BY DONIPHAN COUNTY, KANSAS, OR BY THE STATE BOARD OF RAILROAD ASSESSORS OF THE STATE OF KANSAS, AS AN INDIVISIBLE AND INDISTINGUISHABLE PART OF APPELLANT'S RAILROAD PROPERTY IN THE STATE OF KANSAS?

The sections of the statutes of Kansas applicable in this suit are as follows:

"§ 6852. All toll bridges shall be listed in the township or ward where the same are located; and if located in two wards or townships, then one-half in each of such wards or townships."

"§ 6872. For the purpose of assessment of railroads and the property of railroad corporations, the Lieutenant-Governor, Secretary of State, Treasurer of State, Auditor of State and the Attorney General, are hereby constituted a Board of Railroad Assessors, who are empowered, and it is hereby made their duty, to assess all property of the railroads and railroad corporations in the State of Kansas; *Provided*, That nothing in this section contained shall be construed to include within the meaning of this act any real estate in this State owned by any railroad company, and not used or necessary to be used for the convenient and daily operation of its railroads. * * *"

"§ 6873. * * * The Board, when properly organized as herein provided for, shall proceed to ascertain all the personal property of any railway company owning, operating or constructing a railway in this State, which for the purposes of assessment and taxation shall be held to include the track, roadbed, right-of-way, water and fuel stations, buildings and land on which they are situated, adjacent to or connected with the right-of-way, machinery, rolling stock, telegraph lines and all instruments connected therewith, material on hand and supplies provided for operating and carrying on the business of such railway, together with the moneys, credits and all other property of such railway

company used or held for the purpose of operating its railroad by such railway company, and appraise and assess such property as personal property at its actual value in money."

Section 6875 provides what kind of a return shall be made by the railroad company to the Board, and is as follows:

"§6875. * * * *First*, Of the right-of-way, track and roadbed, giving the entire length of the main track in this and other States; and showing the proportion in each city, township and county, and total in this State. *Second*, The length of each side or second track and turnout, and aggregate length of such second or side-tracks and turnouts, together with the name of the city, township and county in which such side or second tracks and turnouts are each located. *Third*, A complete list, giving size, location (as to city, township and county), material, and value of all depots, station houses, machine shops, or other buildings situated wholly or in part on right-of-way, together with all platforms, fuel and water stations, and the machinery and tanks connected therewith. *Fourth*, Showing the number of ties in track per mile, the weight of iron or steel rails per yard used in main or side-tracks, what joints or chairs are used in track, the ballasting of road, whether with gravel or dirt, the length of time iron has been used, and the length of time the road has been built. *Fifth*, A full list of the rolling stock belonging to or operated by the person, company or corporation, which shall distinctly set forth the number, class and value of all locomotives, passenger cars, sleeping cars, dining cars, express cars, mail cars, baggage cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, and all other kind of cars owned or leased by said company. *Sixth*, A statement or schedule showing, first, the amount of capital stock authorized, and the number of shares into which such capital stock is divided; second, the amount of capital stock paid

up; third, the market value of such stock, or if no market value, then the actual value of the shares of stock. *Seventh*, A correct, detailed inventory of the number, kind and value of all tools and material used for repairs, and of all other personal property."

The agreed statement of facts in the case at bar, as well as in the Devereux case, shows conclusively that the bridge in question is a toll bridge. It was built by an independent private corporation as a business speculation, for all the purposes to which toll bridges are adapted.

(See agreed statement of facts, No. 5, P. R., p. 19. Also, exhibit B, P. R., 23–4.)

That it was so regarded by The St. Joseph & Denver City Railway Company in the assignment of its franchise to The St. Joseph Bridge Building Company, on April 8, 1871, note the following provision from said instrument:

"And said party of the second part further covenants and agrees that it will never charge said party of the first part, or its assigns, any higher *toll* than it charges other railroad companies; and said party of the first part and its assigns shall have all the rights and privileges of the most favored railroad company in the use of said bridge."

(See P. R., p. 23.)

The articles of association of The St. Joseph Bridge Building Company, referred to in Exhibit B, clearly establish the nature and character of the structure erected.

Under the agreed statement of facts (P. R., p. 21, paragraphs 15, 16 and 18), the bridge is used in the same manner by appellant as it was used by The St. Joseph Bridge Building Company.

See also the opinion of Judge BREWER, in 41 Federal Reporter, page 14, and opinion of Judge RINER, P. R., pages 53 to 55, and opinion of Judge THAYER, P. R., pages 63 to 67.

A toll is a payment for permission to pass over or use a bridge, road, ferry, railway, market, port, etc. Frequently the right to demand tolls forms a part of a franchise.

Rapalje & Lawrence, Law Dictionary.
Bridge Company v. Patterson, 74 N. Y., 365–70.
State v. Haight, 30 N. J., 447–8.
Webster's Unabridged Dictionary.

The sum which one railroad company receives from another which uses its tracks as compensation therefor, is a toll within the meaning of the revenue act of Pennsylvania of 1879 (P. L., 112), which imposes a certain tax on the gross receipts of a railroad company "for tolls and transportation."

Commonwealth v. N. Y., Penn. & Ohio Ry. Co., 22 Atlantic, 212.
Commonwealth v. Tioga Ry. Co., 22 Atlantic, 212.
Commonwealth v. N. Y., Lake Erie & Western Ry. Co., 22 Atlantic, 806.

The agreed statement of facts further shows that the appellant specifically mentioned this bridge in its return to the State Board of Railroad Assessors, but did not mention the other bridges upon its line in Kansas, constructed over the Blue and Nemaha rivers. This shows conclusively that

appellant itself does not regard the bridge in question as of the same nature or character as other bridges along its line of railway. The other bridges are returned, assessed and taxed as roadbed. See *Anderson v. C. B. & Q. R. R. Co.*, 25 A. & E. R. R. Cases, 522. (Same case 117 Ills., 26.)

Appellant contends that ownership is the statutory test to determine by what authority property shall be taxed.

We do not think this position tenable in the case at bar, for the Legislature of the State of Kansas has provided that all toll bridges shall be assessed and taxed in the locality where they are situated. (See statute quoted above.)

It is the nature, character and use of property which determines whether it is a toll bridge or not. That being established, it must necessarily follow that the bridge may be assessed and taxed by the proper officers of Doniphan county.

The question of ownership is wholly immaterial, for, under the laws of the State of Kansas, the tax is levied against the *property*. See *Shoup v. C. B. U. P. R. R. Co.*, 24 Kan., 563.

To hold that a toll bridge owned by a railroad company should be assessed by the State Board of Railroad Assessors, would be in direct contravention of the provision of the Constitution of Kansas cited below.

The Legislature undoubtedly has the right to specify any class of property separately for taxation in a certain manner, but it must include all property of that character.

Sec. 17 of Art. 2 of the Constitution of Kansas is as follows:

"All laws of a general nature shall have a uniform operation throughout the State; and in all cases where a general law can be made applicable, no special law shall be enacted."

Sec. 1 of Art. 11 of the Constitution provides:

"SECTION 1. The Legislature shall provide for a uniform and equal rate of assessment and taxation. * * *"

In the case of *Francis v. The A. T. & S. F. R. R. Co.*, 19 Kas., 307, Mr. Justice BREWER, in delivering the opinion of the Court, says:

"In other words, the constitutional requirement of an equal and uniform rate of assessment does not compel the use of but a single mode or method of assessment. *Different kinds of property may be assessed in different modes, and by different officers*, provided only, that the rate at which these different officers are required to make their assessment is uniform, and the same for all."

In the case of *The State Board of Assessors v. State*, 24 A. & E. R. R. Cases, 555, the Court says:

"A law which taxes a class of property separately is not unconstitutional if it embraces *all property of that class*, and applies to it uniform rules, and taxes it according to its true value."

That the rate of taxation shall be uniform means that the course or mode in levying or laying taxes shall be uniform. See—

Weeks v. Milwaukee, 10 Wis., 242.
Wisconsin Central Ry. Co. v. Taylor Company, 52 Wis., 43, and cases cited.
New Orleans v. Davidson, 30 La. Ann., 555.

Illustrating our contention, suppose a private company under an act of Congress built a toll bridge across the Missouri river near the bridge in question. Under the contention of appellant, this company's bridge would be taxed by Doniphan county, while the toll bridge of appellant would be taxed by the State Board of Railroad Assessors, which clearly would require two different modes of taxing the same kind of property.

As applicable to the case at bar, we desire to refer to the decision of the Court in the case of *The Chicago, Milwaukee & St. Paul Ry. Co. v. The City of Sabula*, 19 Fed. Rep. 180, in which the Court says:

"Under this construction of the act, all bridges over the Mississippi and Missouri rivers used for the passage of railway trains will be assessed and taxed under one and the same statute. If it be held, however, that a bridge used solely for the passage of railway trains is to be taxed by the census board if owned by a railway company, but if owned by an individual is to be assessed by the local assessors, then we would have different modes of assessment and taxation applied to similar property, used for a like purpose and differing only in the ownership. It can hardly be supposed that the Legislature intended to enact such a law, in view of the constitutional provision already quoted."

In the case of *Anderson v. The C. B. & Q. R. R. Co.*, 117 Ill. 26, the Supreme Court of Illinois, in passing upon an act which provided that—

"All bridge structures across any navigable streams forming the boundary line between the State of Illinois and any other State shall be assessed by the township or other assessor in the county or township where the same is located as real estate,"

held that the act did not change the law then in force, and take from the jurisdiction of the State Board of Railroad Assessors the right to tax bridge structures across such rivers, which were used exclusively for railroad purposes.

In the syllabus the Court says:

"A thing which is within the letter of a statute is not within the statute unless it be within the intention of its makers. In determining the meaning of a statute, the Courts are not confined to its words, but will regard its purpose and consider it in connection with other statutes *in pari materia*, and in view of the condition existing."

So, in the case at bar, we think we can truly say that it never was the intention of the Legislature of Kansas to exempt a toll bridge from local taxation, no matter if it was owned by a railroad company. It is a class of property which is not necessary to be owned by a railroad company, although, as in this case, its ownership may be vastly beneficial to the railroad company in a pecuniary sense, as it pays interest of 5 per cent. and over, on a valuation of $900,000.

In addition, § 1230 of the General Statutes of Kansas provides:

"Any railroad company in the States of Missouri and Kansas, running to the Missouri river, dividing the State of Missouri from the State of Kansas, shall have the right to construct bridges and maintain ferries across the Missouri river. Said companies shall construct the necessary draws to said bridges, so as not to interfere with the navigation of the river; but such bridges and ferries shall not be used for any other purpose than for the crossing of freight and passengers transported on said road."

In the general incorporation laws of the State of Kansas, under which all railroad companies are chartered, it is nowhere provided that a railway company may engage in the operation and maintenance of toll bridges; so that we affirm again, that it never was the intention of the Legislature that such a bridge should be assessed and taxed by the State Board of Railroad Assessors.

Appellee insists and maintains that it is the nature, use and character of the bridge which determines by which authority it shall be assessed and taxed.

In the case of *The Chicago, Milwaukee & St. Paul Rly Co. v. The City of Sabula, supra*, the Court says:

"No good reason is perceived why the modes of assessment and taxation should be varied by reason of a difference in ownership."

And in the latter portion of the syllabus the Court held:

"That the nature of the property and not the ownership, determined whether it fell within section 10 of the act, and that the bridge was, therefore, subject to be taxed by the local taxing district."

In the case of *Illinois Central Railway Company v. Irwin*, 72 Illinois, page 455, in which case the railway company claimed exemption under an act of the Legislature of the State of Illinois, and operating a steamboat in connection with its railway, the Court held that, "Steamboats are not railroad property, and are not, although owned and used by a railroad company, exempt from taxation as such under

a charter which exempts such railway company from taxation," and in the opinion the Court says:

"It surely needs no argument to prove that steamboats are not railroad property, or that a right of carrying by rail does not include as a necessary incident the right to carry by water. The duties and obligations of carriers by water are in many respects entirely different from those of carriers by land, and it is impossible that a system of rules and regulations strictly applicable to the duties of the one could be applied to the other. It may be that the business prosperity of appellant is greatly promoted, and the public convenience subserved by its ownership and use of this boat. So, too, it might be by lines of stage coaches, or by constructing lines of canal or other lines of railway connected with its line at such convenient points as would enable it to draw to itself the trade and travel of the country for many miles east and west; yet it could not be claimed that, therefore, such enterprises are within the powers conferred by appellant's charter, or that *property so employed is within the contemplation of the Legislature in the enactment of the section under consideration.*"

See also—

State v. St. Paul, M. & M. Ry. Co., 42 Minn., 238.
San Francisco v. Central Pacific Ry. Co., 63 Cal., 467.
People, ex rel. Seip, v. C. & W. I. Ry. Co., 24 A. & E. R. R. Cases, 612, (and p. 449).

If we mistake not, appellant is inspired by the case of *Tillery v. The Hannibal & St. Joseph R. R. Co.*, 97 Mo. 348, since the case at bar is sought to be presented in a different form, while having the substance of the former suit, as was done in the Tillery suit in Missouri. The case had previously been decided and reported in 89th Missouri, at page 98, and also reported in 14 S. W. Rep., at page 511.

In the syllabus, upon the first hearing, the Court said:

"A railroad bridge, for crossing which a toll is charged, is taxable as a toll bridge under Revised Statutes of Missouri, 1879, §6901, providing that all bridges owned by joint-stock companies, and all such bridges where toll is charged for crossing the same, shall be subject to taxation, and that the chief officer of any such bridge or the owner of any toll bridge shall render such statement of the property of the bridge as is required of railroad property."

In the opinion, the Court says:

"Under § 6901, a railroad bridge constituting a part of the track, and also used as a toll bridge, is taxable as a bridge. If only used as a part of the railroad track for the passage of trains of cars belonging to the company, or by others for other purposes for which no toll is charged, it is taxable only as a part of the road."

And the Court further says that "a railroad bridge over the Missouri river, not used as a toll bridge, is not taxable as a bridge."

In the above case it was shown that the Hannibal & St. Joseph Railroad Company owned the bridge in question, but it was also further shown that the bridge was a toll bridge, and so the Supreme Court of Missouri decided that without regard to ownership, the bridge was taxable if a toll bridge. If it was not a toll bridge, and owned by a railway company, it was part of the railroad property, and properly assessable by the State Board. It is true that in a later case of the same title, reported in 97 Mo., at page 348, the Supreme Court of Missouri held that the bridge should be returned as a part of the railway, but even in

the latter decision the Supreme Court says, referring to the former suit :

"While the petition states that the bridge is owned by the defendant, it also states that it is a toll bridge, and does not disclose the fact that it is a part of the defendant's road. On this state of the pleading we held, and could only have held, that the bridge was properly assessed as a separate structure."

Which case clearly shows that it is not the ownership which determines under whose authority the toll bridge shall be assessed, but the use to which it is put. For, if it was a toll bridge the Court says, it was properly assessed as a separate structure, thereby affirming in detail the particular point at issue in the present case and the previous case.

In the later decision of the Supreme Court of Missouri, in the cases last cited, it was shown that the bridge, which was entirely within the confines of Missouri, was built by the railroad company as a railroad bridge, and as an original part of its line, which is not the case in the present suit.

In the case of *The State v. The Mississippi Bridge Company*, 19 S. W. Rep., 421, the Supreme Court of Missouri balanced itself by another decision; so that if it were necessary to reconcile the finding of Judge RINER with the action of the Supreme Court of Missouri, the whole case might well be cited as an authority for the appellee. The facts are the same in the two cases, except that tolls were taken by the Mississippi Bridge Company from railroad

companies only, while the appellant collects from the general public as well — for passengers, vehicles, etc. But the Court holds in the last case that the bridge is taxable by local authority, because, forsooth, the railroad company's title is defeasible, although it holds under a lease "forever." Surely the mere transfer of title absolute will not defeat the rights of the public. To hold so were to offer a simple plan to avoid local taxation.

Appellant asserts that the bridge in question forms a part of its continuous line of railroad, and is an indivisible and indistinguishable part of its railroad property in the State of Kansas. This appellee denies, and respectfully refers the Court to his answer and to the agreed statement of facts, which show conclusively that the appellant itself does not use, regard or treat said bridge as a part of its continuous line of railway as other bridges upon the line of its railroad are treated and regarded. No fairer exposition of the fallacy of the contention of the appellant can perhaps be found than in the reasoning of the Supreme Court of Nebraska in the case of *Cass County v. The C. B. & Q. R. R. Co.*, 41 N. W. Rep. 246, where a similar contention was made by the railway company. The Court says:

"It was claimed in the trial below that the bridge and railroad of defendant in error were treated and considered by it as a continuous line of road. For that purpose witnesses were placed upon the stand who testified that the railroad was operated west from Pacific Junction, in Iowa, as one continuous line, but it was also shown, by the same witnesses, that much higher rates were charged for the

transportation of passengers and freight across the bridge than over any portion of its road; and that while, in fact, so far as the running of trains and the transportation of passengers and freight were concerned, no change or transfer was made, yet an additional burden was placed upon all for crossing the bridge. To that extent, at least, the road was not operated as a continuous line. * * *

"It appears from the testimony that the bridge in question is a very costly structure, and its great cost no doubt serves as a basis for the greatly increased charges for the transportation of persons and freight. We cannot believe, from the language used by the Legislature, * * * that such structures should be erected and conducted as this one is shown to be, and that they should be assessed and taxed as a part of the road bed. * * * It would be manifestly unjust that such a bridge should be added in the railroad mileage without some provision being made for taxing it according to its value. * * * If the theory that the bridge in question constitutes a part of the roadbed is true, * * * the same portion of the road would be within the law regulating the fares for passengers, fixed at three cents a mile"—[the same as Kansas.]

In the light of such reasoning, the Circuit Court of the United States for the District of Kansas may well say that the bridge in question is an independent structure. It is the use that stamps the character of the property. It is used independently of the roadbed, and that use is emphasized by specific charges.

The attention of the Court is also respectfully referred to the return required to be made by the railway company in Nebraska, in comparison with the return made by the railway company in Kansas. If the bridge is not a toll bridge, we ask counsel for appellant to explain why it was

specifically returned, when no other bridge along its line of railroad was so returned. The statute of the State of Kansas does not require such a return to be made, and it was supererogation on the part of the railroad company to make it, and entirely inconsistent with its position here, where it claims that the bridge in question is taxable the same as any other bridge owned by the railroad company.

The insinuated complaint in appellant's brief that the property has been already taxed, and that the tax has been paid, hardly merits a reply, for the reason that he who comes into a Court of Equity must come with clean hands. It was its own wrong that induced the State Board of Railroad Assessors to tax the bridge. Prior to 1892 the taxes levied by Doniphan county on the bridge had always been paid.

In the case of *The C. B. & Q. R. R. Co. v. The People*, 27 N. W. Rep. 200, the Court held that the fact that the railroad company falsely returned certain lots as a part of its railroad track, and paid the taxes levied thereon in pursuance of an assessment by the State Board, does not exempt the lots from assessment by the Town Assessor, since the double assessment is caused by the company's own act.

See also *Toll Bridge Company v. Osborne*, 35 Conn. 7.

In the face of the decision of Justice BREWER in the Devereux case, we are unable to conceive how appellant can complain, or has any right to complain. The return was made by the appellant contrary to law, and presents

nothing for equitable consideration, and entitles the appellant to no relief.

Counsel for the appellant lays stress upon the fact that it is the legal successor by foreclosure proceedings of all the rights and privileges of The St. Joseph & Denver City Railway Company. We admit it; but what are they? The foreclosure proceedings of The St. Joseph & Denver City Railway Company were had in 1875. (See agreed statement of facts, No. 14 P. R., 24.) The railroad company operated and maintained a line of railroad under its charter from Elwood, Kansas, westerly in the State of Kansas. It had already parted with its franchise to build the bridge, and there is nothing in the agreed statement of facts to show that the St. Joseph & Grand Island Railway Company owns any line in the State of Missouri, nor is there anything in the record showing that The St. Joseph Bridge Building Company ever mortgaged the franchise received from The St. Joseph & Denver City Railway Company, and that this franchise was foreclosed, and is now held by the appellant. The bridge was built by a private corporation for the purpose of pecuniary profit as a toll bridge, and has been continuously, and is now, operated as such. Therefore, we submit that the judgment of the Circuit Court should be affirmed.

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